

# NASFAA's "Off the Cuff" Podcast – Episode 151 Transcript

Speaker 1:

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Justin Draeger:

Hey everybody. Welcome to another edition of the podcast. Before we get into the regular programming of the podcast, it's just Allie and I. Allie, it's 8:20 p.m. On Thursday night. You're still in the guest bedroom I see of your house.

Allie Arcese:

Yeah. A little darker than it was earlier.

Justin Draeger:

We recorded the podcast seven hours ago, but we have some late breaking news tonight, and I have a feeling there's going to be a lot of questions about it. The department threw up a statement onto its CARES Act, higher education emergency relief fund webpage. It's all in red, so it's very assaulting.

Allie Arcese:

Threw up is a good way to describe it.

Justin Draeger:

And of course, nothing's posted on IFAP about this, I don't think.

Allie Arcese:

No.

Justin Draeger:

And it's causing a lot of confusion, a lot of weeping in the profession. And here's our hot take of what this is saying. Okay? So it's saying number one, the department basically said, it will not enforce its guidance that says emergency grants can only use by title, for students.

Allie Arcese:

Title IV eligible.

Justin Draeger:

Thank you. Title IV eligible students. So it's saying, that was just guidance. That never had the force of law. Which is mind-blowingly insane as that is for just a second, presumably this is because of all the blow back, the critique and criticism.

Allie Arcese:

Lawsuits.

Justin Draeger:

Yeah. Us and lawsuits, the department has now basically said, "No, those were just suggestions."

Allie Arcese:

Yeah. And it's weird too because early on in this thing, they reference an announcement in the Federal Register from February, 2020, stating this principle that any guidance lacks the force and the effect of law. And I vaguely remember when that happened, not thinking this might come back to bite them.

Justin Draeger:

Well, here we are. Basically, they said they wouldn't enforce. Okay. So number two, we think it's saying, that still though there are parts of the statute that are not guidance, that they're actually statutory, and that has to do with the emergency grants that can't be used by DACA students, undocumented students, international students. Because those students are prohibited in US code. Existing US code from receiving public benefits. This is back from the personal responsibility and work opportunity reconciliation act of 1996 and we've talked about that on the podcast before. We talked about that, I don't know, two months ago. So, that's the second thing they're saying. So Title IV eligibility is just a suggestion, not the force of law. But still, DACA, undocumented and international students would not appear to qualify.

Justin Draeger:

Third thing they're saying is, it does answer a question about the institutional share that NASFAA has asked, which is, there are no Title IV limitations on a school's ability to reimburse themselves to cover costs associated with those costs to change the delivery of instruction. So the practical applicability here is that a school could reimburse itself. For example, if they paid out room and board refunds to a student, it doesn't matter if that student's a DACA student or a Pell-eligible student. There is no limitation on the type of student for which a school is reimbursing itself from the institutional share.

Allie Arcese:

Which is so confusing and frustrating. Like they're saying, "Don't give it to DACA students but also don't not give it to DACA students."

Justin Draeger:

Well in this instance, the school gave it to the DACA students themselves or refunded them money or something and then can reimburse themselves for those students, but apparently cannot give those students directly.

Allie Arcese:

Yes. So as long as the school is the middleman.

Justin Draeger:

That's right.

Allie Arcese:

Yeah.

Justin Draeger:

Now, if you take your institutional share just coincidentally, and you turn that institutional share, any portion of that into an institutional emergency relief grant, then that DACA, international thing still applies. You cannot pay them those grants according to what the department's saying, because that's underlying statute, but you can reimburse yourself if you refunded those students or paid them because of some expense related to change of delivery instruction. That's what we think it's saying.

Justin Draeger:

We're going to have something in today's news, talking about this as well. And I don't know. When this first came out, when the Title IV eligibility thing hit, we were very upset because it was not in keeping with law. Incredulous. Disbelief. As we moved into the stages of grief and acceptance, I think we still were critical of the department, but trying to figure out how schools could do this in a way without requiring every student to file a FAFSA. And now, we're back to where we were two months ago. We went through all this rigmarole, I don't know how many schools have already distributed funds based on a model that's now not enforceable by law. And I used to say I would laugh or I would cry, I can't laugh or cry. I don't know what to say about it. I don't know what to say about it.

Allie Arcese:

Yeah. I mean, just think back to that lawsuit from the California Community Colleges. I remember one of the districts saying their initial model, which only focused on students who had demonstrated financial need, was like 58,000 and then after the guidance came out, it knocked it down to 21,000 and a lot of those students, it wasn't even an issue of citizenship.

Justin Draeger:

Right. It was just because of the 484 requirements that it had knocked them out.

Allie Arcese:

I mean, like we say later in the podcast, schools can't wait forever to give these grants out. So at this point, everyone who has missed out, have they just missed out?

Justin Draeger:

I don't know what to say about it. And-

Allie Arcese:

Unless there's further funding.

Justin Draeger:

In 20 years, I've never seen anything like this. I've seen some confusing stuff, I've never seen anything. I can't recall a time I've seen something like this.

Allie Arcese:

Yeah.

Justin Draeger:

All right. So everything else you're going to hear after this was recorded before this guidance came out. So we'll put this at the top of the hour, top of the podcast, and I don't know what to say.

Allie Arcese:

We look forward to your questions.

Justin Draeger:

There's one ominous note I'll just add in here.

Allie Arcese:

Oh, yeah.

Justin Draeger:

If it is. The department says in here that, at the very last sentence that, "The department is continuing to consider the issue of eligibility for emergency relief grants and intends to take further action shortly." Oh my God.

Allie Arcese:

Wait. What?

Allie Arcese:

What?

Justin Draeger:

Stop.

Allie Arcese:

Why? When?

Justin Draeger:

Just stop. Please.

Allie Arcese:

Also if it's coming so soon, that to me is the most anxiety inducing thing, is when they just say soon with no date attached.

Justin Draeger:

Well, I think we know that's tomorrow at five. What are you doing this weekend?

Allie Arcese:

Apparently nothing.

Justin Draeger:

Okay. All right. Well, I think that's it. Right Allie?

Allie Arcese:

Yes.

Justin Draeger:

Alright.

Allie Arcese:

Alright. Enjoy the rest of the podcast.

Justin Draeger:

Thanks. Hey everybody. Welcome to another edition of Off The Cuff, I'm Justin Draeger.

Allie Arcese:

I'm Allie Arcese, with our communications team.

Megan Coval:

I'm Megan Coval with our policy team.

Jill Desjean:

And I'm Jill Desjean, also with our policy team.

Justin Draeger:

Welcome back everybody. One question, off the bat. So do you think when we return to... And I'll put in air quotes, "normal." Do you guys want to continue to do the podcast this way or do you want to meet in person? I'm genuinely just curious. Is it preferable? I've gotten used to this. This kind of, I don't know.

Allie Arcese:

Yeah. I think this is a lot easier than I thought it was going to be. I don't know. I mean I think it depends on what everyone's comfort level is.

Justin Draeger:

So let's not even use normal. So, we're going to go through these phases, right? So phase one is like, things are opening back up, which in Northern Virginia, Maryland, DMV area, we're not even phase one yet.

Allie Arcese:

No.

Justin Draeger:

Everything's still closed down. I think DC said they're going to close down through the first in June. But then we go into phase one and things start to open back up. And then, from there you increase until we go back to a normal. But even when it's in phase one or phase two, you're supposed to still be social distanced, you're supposed to be wearing masks still. If we were all in the office today, we probably, and it was phase one, let's say it's June 15th, we'd still probably do it by Zoom, right?

Allie Arcese:

Yeah, I would think so.

Megan Coval:

Yeah. It's true I guess.

Allie Arcese:

I mean, we have the ability to spread ourselves out in the conference room, but, I don't know.

Justin Draeger:

But see, in the Zoom call, I'm never this close to you in personality. Well, I'm rarely this close to you in person. Where your head takes up an entire 26 inch monitor.

Allie Arcese:

Only when you surprise me around the corner.

Justin Draeger:

Right. Also the-

Megan Coval:

Yeah. I like doing it in person. I miss [crosstalk 00:09:50].

Jill Desjean:

Yeah.

Megan Coval:

But-

Justin Draeger:

Critical needs are the only reason people can be in the office right now. We still have a building to secure, et cetera, et cetera. Well, Tuesday we had one person in doing checks. I was in the office securing portions of the building and did we have a webinar? I feel like we had a webinar on Tuesday. And then-

Megan Coval:

Yeah. The annual update. Right?

Justin Draeger:

Right.

Megan Coval:

Yeah.

Justin Draeger:

And then Beth, our executive vice president, also had to be in the office on Tuesday. So three people. I've not been in the office and seen three people in like, I don't know, eons. So Beth and I were having a conversation, and I was like, "Well, you know what? We're both in the office. Do you want to just meet in this common area?" First of all, we felt like we were doing something illegal. And then second, we got together in person. We were appropriately distanced, but Beth was like, "I don't know how to interact with people in real life anymore. I don't know. Should we just go back to our offices?" So, I just feel like, maybe it's going to be weird to all be in person again. I don't know.

Allie Arcese:

Yeah. I think it's going to be a little bit of a game of chicken. Seeing how the other person acts or whatever, just feeling each other out at first.

Justin Draeger:

Yeah. When I pass people on the street, we're like, we turn away from each other and we sidle by each other. Because, I feel like nobody wants to be in contact with one another. So, two things about our building, when you go in from now on, you have to wear a mask. There's a huge plexiglass now, that is in front of the security desk. So you cannot interact. And in fact the card reader to get into our building, is also behind the plexiglass now.

Megan Coval:

Oh.

Justin Draeger:

And they've redone the elevators now, so that when you go in, you have to type in the floor that you want to go to before you get on the elevator.

Megan Coval:

Huh.

Justin Draeger:

So it's going to be a whole new... Yeah.

Allie Arcese:

So they were renovating the elevators before all this happened with plans to do that?

Justin Draeger:

Right.

Allie Arcese:

How is that easier than getting into the elevator hitting a button?

Justin Draeger:

Well, here's what I think in some nebulous way. If you have multiple elevators and it knows what floors it's going to, then supposedly it can do the math and be more efficient about which elevators are going where. It's like when you get on an elevator and there's seven floors pushed already. And you're like, "Oh God. I wish I had just waited for the other one." Supposedly the elevators will be able to do that math for you and say, "All right. This one's already got going to four floors, this one's completely open and this person needs to go to the top floor." You see what I'm saying? So it's supposed to be doing that balancing for you.

Allie Arcese:

So you're like giving the elevator a brain?

Justin Draeger:

Supposedly now the other thing... Well that's creepy. But the other thing is, there's only two tenants in our building and we're on the same floor. So I don't know what you know of [crosstalk 00:12:55].

Jill Desjean:

It's going to be amazing once they fill that building.

Megan Coval:

Yeah.

Justin Draeger:

Right. So, especially with the real estate market, what it is today, given that [crosstalk 00:13:03]

Jill Desjean:

Yeah. Everybody is flocking to go downtown [crosstalk 00:13:05].

Justin Draeger:

Yeah. There's nobody downtown.

Megan Coval:

Yeah.

Justin Draeger:

And nobody's itching to get back. So, we'll see. Memorial Day plans, what do you got?

Jill Desjean:

Well then out for some ED guidance, later on Friday?

Justin Draeger:

Yeah. Should we put money down? So I'm putting myself in the mind frame of the department. I feel they're like, "Let's rush, let's get this done for Memorial Day." Like anybody would do. You'd say like, "All right. Let's close out all our stuff." And then they'd go enjoy the weekend without really realizing that you just dumped a bunch of stuff on everybody else.

Jill Desjean:

Now, a bunch of people went [inaudible 00:13:35] out of the weekends. Thanks to that.

Allie Arcese:

Okay. I don't know that, that would be the reasoning Justin, and this is just my cynicism of dealing with the news cycle and various different departments of education. There was a streak for three years in a row where the department, when Arne Duncan was Secretary released big news about the college rating system the Friday before Christmas, at four in the afternoon, years in a row. So I think being a Friday before a holiday, it's almost guaranteed that it's going to happen in my opinion.

Justin Draeger:

Because you feel like they're trying to [crosstalk 00:14:10].

Allie Arcese:

Because that is the ultimate.

Justin Draeger:

Yeah.

Allie Arcese:

That's the ultimate news dump. Yeah.

Justin Draeger:

Yeah. You're trying to bury the news. You don't want anybody to see it.

Jill Desjean:

Yes.

Justin Draeger:

I feel like this is big news in our community, but to the public at large, if they come out with written guidance about students' self-certification for CARES Act relief funds.

Jill Desjean:

Yeah. I haven't been able to get anybody in my house excited about that.

Megan Coval:

It was 345 last week, right?

Jill Desjean:

Yeah.

Megan Coval:

On Friday? Yeah. So-

Jill Desjean:

What we shouldn't do Meg, is we should not slack each other about how we think it's not coming out today. Because that's precisely what we were doing at the moment the guidance dropped last week.

Megan Coval:

Yeah. I was like, Jill, I can't believe, could it be? It's not going to be here, and then two minutes later she just dropped a link. No words. Like boom.

Justin Draeger:

It's here.

Megan Coval:

There it is.

Justin Draeger:

Okay. That's maybe a good jumping off point here, to get right into the guidance that was released last Friday. I will say when it dropped and I saw the notes that were going back and forth in Slack, somebody had posted like, "Oh, this is actually pretty digestible. I think we're going to be okay." And then of course, like everything, as soon as guidance drops, that's supposed to clarify things. We have like a million more questions. So Jill, why don't you give us an overview of what happened on Friday and then we can dig into this just a little bit.

Jill Desjean:

Sure. So the big stuff, on distance ed, they expanded that broad approval for schools to use distance ed, to include not just payment periods that overlap March through June of 2020, but also now payment periods that begin on or between March 5th, 2020 through December 31st, 2020. So that had only gone to June before. So they stretched it down on the six months. They gave some flexibility on verification of high school completion for the v4, v5 verification groups. So, they're allowing schools to accept a signed statement from students saying that they completed high school, and that's going to be for both the 19,20 and the 2021 award years and that's going to be effective through December 31st of this year.

Jill Desjean:

That is great, except that they gave other v4, v5 flexibility that doesn't have the same effective dates or effective award years. So it is going to be confusing. The other flexibility was waving in person and notary requirements for identity verification and that was from guidance. I think that was from the April 3rd guidance, and that's only applicable to 19-20 and only goes through June 30th. So hopefully they'll come back and make that flexibility match, the new flexibility they just gave, but right now we've got two different effective award years and dates, which is just confusing.

Justin Draeger:

Right.

Jill Desjean:

On SAP, they gave some examples of circumstances that schools could use to reasonably conclude that a student didn't finish their credits because of COVID-19, so that they could exclude those from the attempted credits in the maximum timeframe calc, which is something that was allowed by the CARES Act. And they gave some guidance on pass, fail grades, they basically said that an institution could modify its policies if they have any that limit the number of pass/fail grades that can be used, I guess, if they limit pass, fail grades at all. They can modify their policies. They can also adopt a temporary policy, related just to COVID-19 for a short term to allow pass/fail grades. And they just mentioned that generally pass, fail grades don't count GPA, but that your institutional policy might factor that in and follow your own policy if that's the case.

Jill Desjean:

They gave a little bit of flexibility on teach grants, for people who were actually fulfilling their service obligations, acknowledging that the K-12 system was impacted by COVID-19 as well, and that teachers may have had their full time status changed to part time or may have even had a permanent interruption and weren't able to finish their year of teaching as they had planned due to COVID-19. So people who are impacted that way would still be treated as having been employed full time for the purpose of their qualifying employment that fulfills their service requirements. So that was a nice thing to see. And save the best for last, return of Title IV funds.

Justin Draeger:

Right. So this was implementing the CARES Act allowance for a waiver for R2T4?

Jill Desjean:

Yeah.

Justin Draeger:

All right.

Jill Desjean:

Pretty cool language in cares. It's why I'm looking forward to trying to implement it.

Justin Draeger:

Yeah. So, I would say 80? What do you think? 70% of the questions we got on yesterday's webinar, which, if people want to deep dive into any of these things, they should go back and listen to yesterday's webinar. It's available on the NASFAA website. It's open to everyone, so it's not part of our webinar package, member, non-member for now, people can go in and see all of our COVID related webinars. We dug into this deeply, but what would you say? The majority of the questions seem to be about R2T4.

Jill Desjean:

Yeah. They were. Almost all about R2T4.

Justin Draeger:

Yeah. And I understand why it's confusing, there's one piece in particular that I think people are getting hung up on. And if I go back into the IFAP announcement, the electronic announcement. And Allie, maybe we can put this in the show notes. If I'm looking at the language in return of Title IV, everybody's getting hung up on this March 13th date. So, let me read what's in here. And then Jill, I think this is what people are getting confused on and then we can talk about it. It says, for any student who begins attendance in a payment period or a period of enrollment that begins on or includes March 13th, 2020, and subsequently withdraws from the payment period as a result of COVID-19 related circumstances, an institution is not required to return Title IV.

Justin Draeger:

Where I think people are getting hung up is that it says, "Enrollment period that begins on or includes March 13th, 2020 and subsequently withdraws. And I think a lot of people are reading that as, subsequent to March 13th withdraws. And I'd say that was a lot of questions repeated over and over again.

Jill Desjean:

Yeah. And we do not think that that is the case. I think it is enrolls and subsequently withdraws from a payment period that includes March 13th. As opposed to something happening after March 13th. People are getting confused thinking that either the campus disruption has to have happened after March 13th, or that the student's withdrawal has to have happened after March 13th. Neither of which is true. The way we're reading it, I guess yeah.

Justin Draeger:

Well, just to be clear, the way that it's written here is that, they began in a payment period and that payment period has to include March 13th and that doesn't matter if that's the first day of the payment period or the middle or the last, but the payment period has to include March 13 and then once they're in that payment period and they subsequently withdraw, and that could be within that payment period, then it reads that they would qualify for this waiver. And I think that makes sense because everything, as you talked about earlier, a lot of these dates are moving targets. And March 13th, this is the date because that's the day the president declared a national emergency.

Justin Draeger:

But that doesn't mean that nobody had a COVID related disruption until March 13th.

Jill Desjean:

Exactly.

Justin Draeger:

Yeah. So we were reporting cases back in the winter and that's when we were reporting, I mean-

Jill Desjean:

Right.

Justin Draeger:

Antibody tests show that people were having this without it even being reported. And so, if somebody started in January but they withdrew in the third week of February because they were sick or a family member was sick, then that would be a COVID-related disruption and they should qualify for the R2T4 waiver, for schools implementing it.

Jill Desjean:

Absolutely. Yes.

Justin Draeger:

Alright. The other area of confusion, I think with R2T4, and this is not all the questions and answers, but the other major one I think where we saw a lot of questions yesterday has to do with whether the school can apply the waiver on a case by case basis or whether they have to apply it to everyone. So this question came up in various iterations and forms, some people just wanted to apply it to everybody after March 13th. Some people wanted to apply it to only folks they hadn't already done R2T4 calculations for, because they had put them on hold. First, what NASFAA had been saying all along was, that schools should be doing calculations on R2T4, they should not return any money until we have this guidance. And the reason that we suggested that is because we saw it in the CARES Act, we understood that there would have to be an R2T4 calculation, and the department would need to know that an R2T4 calc was done.

Justin Draeger:

But then the waiver would allow the school not to have to send any money back. So if a school went ahead and did the calculation but then sent money back, and they want to use the waiver, they would have to back all of that out. And then give funds back, retain funds at the school and give funds back to the student if there's a credit balance. Even if those funds were a loan, those loans should be forgiven according to the CARES Act. So, it's not like you're burdening the student with a loan, those loans should be forgiven and that would just be money then for the student. If it's a COVID related leave that results in a R2T4 waiver. So as to whether schools can apply this to some or all, I mean, as we're reading it, the school decides there's a may, in that section about whether the school uses it.

Justin Draeger:

But once the school uses it, everything else turns into a should. And so, do you want to use the waiver? If you are using the waiver, then the waiver should be applied across the board for any students who need an R2T4 calc. And the only reasonable carve out we could see in that guidance, is if you know specifically that it's not COVID-related. And I guess the only way you would know that is if a student just told you outright. But one, this prevents schools then from having to ask on a case by case basis, why did you withdraw, why did you withdraw, why did you withdraw? And then you have your whole slew of unofficial withdrawals. So this allows a school to apply it to everyone. And once you've applied it, then there are these steps that a school has to, it says should.

Justin Draeger:

And when you read a should, I know that's not a may or a must, which is probably preferable in this language, but when I read a should, I think about my auditor picking that up and saying, "Well, here's what you should have done." So from an auditor standpoint, I think a should is, why didn't you do this then?

Jill Desjean:

Yeah.

Justin Draeger:

So, apply the waiver or don't apply the waiver, but in our estimation, if you apply the waiver, you apply it to everyone except for the ones you know for sure are not COVID-related. So that would be your unofficial withdrawals, the withdrawals that happened before March 13th, all of those. Did I miss anything in there, Jill?

Jill Desjean:

I mean, I would just say that, I get where schools are coming from, for the students that they did return funds for, because they've already invested a lot of time and work into doing that. I mean, yes. CARES Act and say that the funds don't have to be returned, but it was for circumstances related to COVID-19 but, schools did not know how ED would define what those circumstances were. They've got 45 days to return funds. It was a risk to take to not return that money, and so if they did, they did work, they didn't have to do first and now they're having to go back and undo it in the context of also having to spend their cares funds, having to report on their spending of their care funds, dealing with a million new PJ requests because of these unprecedented levels of unemployment.

Jill Desjean:

It's not as though financial aid administrators or ever have any downtime, but certainly right now to go back and undo work that they never had to do in the first place, I can see looking at that and being like, "Are you kidding me? Do we really have to do this?" They want to do right by students, but [crosstalk 00:26:41]

Justin Draeger:

I think that's a good point Jill. And I appreciate you calling this out because it's not that, I mean, or anybody on the NASFAA team means to be on our high horse wagging a finger. Like, "This is the right thing to do, do it."

Jill Desjean:

Right.

Justin Draeger:

I think this is how we read it, and I've always said, aid administrators don't mind doing more work because sometimes the administrative burden can become so crushing that it gets misinterpreted as, well schools just don't like to do work. And I've literally been in meetings in the last decade where I've had federal officials actually say that. Like, "Well, schools just don't want to do the work." And that's never the case. The case is, the schools don't want to do work when they don't see a reason to do it, when it doesn't benefit a student to do it, when it just seems like bureaucratic nonsense.

Jill Desjean:

Yeah. I am [crosstalk 00:27:35] doing extra work when it helps students.

Justin Draeger:

Right.

Jill Desjean:

When you are having to prioritize, how do I help students? Do I give out the CARES emergency funds that I have or do I go back and undo all the work I already did? And yeah.

Justin Draeger:

I get it. And then, the CARES Act reporting is another good example. Okay. Reporting doesn't directly help students. So, the fear here is the department's going to release guidance on how to report and they're going to say, "It was due a week ago."

Jill Desjean:

Right.

Justin Draeger:

And so that's the stuff where I see schools tearing their hair out because they say, "What? This doesn't help any students, you didn't get us the guidance, et cetera, et cetera." I mean, this work that will help your students because it will put money back in their pocket. But as you said, relative to the million other things that they're being asked to do right now, the frustration is understandable and sometimes palpable. So, we get it. That's how we're reading the guidance, and if people have additional comments or questions, do send them in. I feel like we'll be working through a lot of this for some time. So, one other thing just really quickly with the CARES Act, the two things we're still waiting for here is one student certification, can they attest that they're Title IV eligible? And two, can schools pay students who have already graduated?

Justin Draeger:

So let me just quickly say on both those topics, we understand that the department is talking openly about this, that their intent is for schools to be able to pay students who've already graduated, with CARES Act emergency relief funds. And we understand the department has said, and we've heard it, that they are looking at a student attestation. I think the problem at NASFAA we're having is, none of this is in writing. And so, once we have it in writing, we'll feel very confident telling schools to go, proceed, do it. I know a lot of schools that are already doing it and that's a risk assessment they did on their campus. I keep getting this question almost daily, can I pay students that've already graduated? Well, why can't I?

Justin Draeger:

I heard the department was... I'm not saying don't, I'm saying understand the risks and we just don't have it in writing yet. That's all I'm saying. So maybe that'll come out Memorial Day weekend. Stay tuned. That'll be the blockbuster movie.

Megan Coval:

Take things off. Kick off the long week.

Justin Draeger:

Alright. Allie, sounds like we had some congressional activity this last week with the congressional review act. You want to catch us up?

Allie Arcese:

Sure. So in news, I'm entirely unrelated to coronavirus, which is rare these days. Nancy Pelosi, Speaker of the House sent a resolution to halt the implementation of the bar defense rules that were developed under the Trump administration. So if you remember a while back, the House first drafted up this resolution and passed it in January. The Senate did so in March, and what was notable about that was, 10 Republicans also joined Democrats in voting in favor of this resolution. And the congressional review act is something that allows Congress to halt implementation of a regulation from a federal agency. And it also prevents that agency from writing a similar rule. So this was sent to President Donald Trump's desk.

Allie Arcese:

It's unclear whether he would actually sign it because we've heard both sides of that. In January, the White House put out a statement saying that advisors would recommend that he veto it. And then in March, it was reported that in a meeting with Republicans, he said that he was actually neutral on the issue.

Justin Draeger:

Yeah. Megan, I feel like I'd love your take here. Because I feel like president Trump is in between a rock and a hard place here because on the one hand, this was his Education Secretary that issued a new regulation on the other congressional Republicans have clearly signed on to overturn.

Megan Coval:

Yeah. I think it is a tough spot. And I think them coming out publicly and saying that they're feeling more neutral about it, is probably a signal that he's going to sign it. And the other interesting thing I saw, which makes things more complicated for the Trump administration, especially during an election year, is that, I guess a lot of the veterans organizations have really gotten on board with him signing this and have started to take out a series of pretty aggressive ads and airing them on Fox News. So that adds a whole other political dynamic.

Justin Draeger:

Are you insinuating that the president is watching Fox News? Is that how they're [crosstalk 00:32:15]? Okay.

Megan Coval:

I don't know. I feel like that was the right network for them to choose, but CNN maybe would've been. I don't know what's going to happen, maybe the Trump administration at this point, there's so much other stuff going on. They just say, "Sign it and let's go forward." I feel like the CRA in itself has an interesting legislative tool because it's different than the old way. A lot of things work in the Senate where you don't need the super majority, the 60 votes to pass it. So, I think it was a 53, 42 vote to pass, but if the president vetoes it, it can go back to Congress. But in that instance, the Senate does need to have 60 votes, which they don't. So they may kick it back, but I don't know if at all, it'll go any further. So-

Allie Arcese:

So if he signs this, then we go back to the Obama regulations?

Megan Coval:

Yeah. And it's just, I don't know. I just said, you're right. It's like, "Do you do this to your own Secretary?" But then I think of the special Olympics example.

Justin Draeger:

Right. [crosstalk 00:33:23].

Megan Coval:

A couple of years ago there's no hesitation.

Justin Draeger:

Right. For people that don't remember the Trump administration office of management and budget cut all funding to the special Olympics, Betsy DeVos who didn't agree with it, still went up and defended it. And then the next day the president threw her under a bus and said, "No, we're not going to cut the special Olympics." Well, the other funny thing about it is he got all sorts of praise for not cutting special Olympics, even though this was obviously power of the purse is with Congress, not the Trump administration, but he was the one who proposed it and then he was the one who rode in and saved the day. This is like a cry. [crosstalk 00:33:58] It this is the definition of creating a crisis that you solve.

Megan Coval:

[crosstalk 00:34:00] Yeah. And hadn't it been in-

Jill Desjean:

Yes.

Megan Coval:

...the US budget proposals too. And [crosstalk 00:34:05] this year someone happened to notice it.

Justin Draeger:

Right.

Megan Coval:

Yeah.

Justin Draeger:

And the funny thing is, the Secretary, I mean, I don't know. Whatever, to her credit, I mean, she was trying to be a team player defending something that afterwards she was like, "No, of course this was crazy." But she was being a team player, then the president was like, "No. I don't know. We're not going to do that." [crosstalk 00:34:26] Yeah. I'm pretty sure if [inaudible 00:34:28] we asked the president in a White House briefing today what he thinks about the borrower defense rule, I'm guessing he would not have an opinion. So, all right. In other news, we have an increasing number of people who are singing

from the same hymn book about the department of education's decision to limit emergency aid to Title IV eligible students. Washington Attorney General Bob Ferguson, is suing the department of education over the Secretary's decision to exclude undocumented students specifically from receiving financial aid in the stimulus law.

Justin Draeger:

The lawsuit was filed in the district court for the Eastern district of Washington and the Attorney General is arguing that Congress has, as we talked about earlier, exclusive power of the purse, and that they did not define who would be eligible for these funds appropriated by Congress and that by limiting who could receive these funds, the Secretary exceeded her authority. In response, Department of Education spokesperson said, "We are faithfully implementing the CARES Act and all other applicable federal laws. And that's been a talking point all along. But this means the California Community Colleges have brought suit about CARES Act emergency funds.

Justin Draeger:

Now, the Washington Attorney General, and it's worth noting, I think, State of Washington Attorney General, the ranking member of the Senate health education, labor and pensions committee, Patty Murray is from Washington. And so in his State, the Attorney General said, "I think there are 17,000 students who are protected under deferred action." And a lot of people miss this point. These are federally protected individuals in this still stands. It's being litigated in the Supreme court, but as of today they are students and they are federally protected and they've been excluded by the department. So-

Megan Coval:

I just wish that the department would give a little more and they haven't from the get go. So I understand once there's been a suit and it has been filed, right? You're not going to comment on the details, but even from the beginning when there wasn't any litigation, ED would just not point to anything specific, which I think is a little bit odd right? Where the message was, it's clearly in the CARES Act and so, okay then. Say where it clearly is. So I think-

Justin Draeger:

Well, given that we were involved as Congress was writing this law very quickly and they said that, I think that what the department pointed to at one point, which they've stopped is this idea that the funds had to be distributed through the same manner as Title IV. Which is basically like, yeah, just give the money through G Five, which all schools already have access to. And somehow the department, originally they were saying like, "Oh, that clearly means Title IV only students." Yeah.

Megan Coval:

I just think with how hot of an issue the dream act has been over the past decade. This was not something that Congress forgot to do, right? If they intended for only Title IV students or no international or undocumented DACA.

Justin Draeger:

Just as a reminder to everybody, there was a time, going back to 2001, when dream eligibility, dreamers, this used to be a completely nonpartisan issue. And in fact, the very first sponsors of this bill were Republican Senator, Orrin Hatch. I mean, if you're looking at scalability of conservative, rationale and

thinking, he's pretty far over very conservative member of the Senate. He was one of the original co-sponsors of this bill. This did not used to be a partisan issue. So anyway, we will see what comes to the litigation. Meanwhile, schools are working to get their CARES Act money out. Do we have anything else to talk about Allie?

Allie Arcese:

Well, I was just going to say one thing on that. Do these lawsuits even really matter at this point? Schools can't wait forever to give the money out, so by the time these actually work their way through the courts, what's going to happen? I don't see a situation where they retroactively say, "Okay. Now you have to take some of this money back and redistribute it to students who were cut out. So-

Justin Draeger:

Yeah. I see two [crosstalk 00:38:49].

Allie Arcese:

...what's the end goal here?

Justin Draeger:

Two victories maybe that could come out of this. I agree with you. The dollar amount victory might be small. But there are three things I can think of. One is if there's additional money that's given out through this vehicle, it would be decided potentially in the future, but it'll work its way through the courts, which will take forever. Two, precedent. So if they went in the courts, does this set precedent for other types of aid even outside of emergency relief grants? Now we're looking at federal benefits potentially for federally protected students. So there's a precedent thing here. And third, the safe harbor for schools. So if you just went ahead and did it, does this provide you a safe harbor because the court says the department should not have limited it in this way.

Justin Draeger:

So I thought about that too, Allie. Functionally, practically speaking, probably not much, but maybe there's some other tangential benefits that would come out of this.

Allie Arcese:

Yeah. Let's see.

Justin Draeger:

All right. So, for our listener question this week, we're actually going to open it up for all listeners. There's been so much related to COVID related guidance back and forth. Every new piece of guidance generates more questions. In fact, yesterday on the webinar, Jill, I don't know if you were watching the question count, but, were you watching it as we went?

Jill Desjean:

Can you actually count them? I was just watching and it was more than I could count.

Justin Draeger:

So yeah, if you're a type of person who likes to make check boxes and lists and check them off and get things done and be productive, then these webinars would be infuriatingly [crosstalk 00:40:24] to you.

Justin Draeger:

So in the question box, if you make it big enough, it actually gives you a tally of the number of questions that are in the queue. So in the first 10, 15 minutes we had like 200 questions.

Megan Coval:

Oh.

Justin Draeger:

So you're like, "Okay, well we're already buried. Then when we got to the Q and A, which I think was around 40 minutes into the webinar, we were at 300 questions. So then we're just diving in, we're ticking off questions and we try to keep it moving at a pretty good pace. But by the end of the webinar we were at 500 questions. It was literally like quick sand. You cannot keep up with the questions. So Allie, we're going to solve all of that today.

Allie Arcese:

Some of it.

Justin Draeger:

All right. We're going to get our perspective right.

Allie Arcese:

We're going to try.

Justin Draeger:

So - going to let people actually dial in, leave a voicemail. It needs to be brief but name school and your question about the CARES Act or department of ED, COVID related guidance, and maybe we'll answer your question on the air. We'll put you on the air and answer your question. So Allie, why don't you give the number that people can dial in and leave their question?

Allie Arcese:

Yes. It is 202 785 6954. And yeah. Just remember, leave your name, your school, your question, be sure to enunciate so we can hear you. And again, the number is 202 785 6954. We'll put it in the episode description.

Justin Draeger:

All right. So leave us your information, we'll get you into a future episode with your CARES Act or COVID-related question. real quick, Allie, the one thing about the Zoom thing I just want to say, is that you get a peek into everybody's life and... You're in your bedroom?

Allie Arcese:

This is our second bedroom. Yeah.

Justin Draeger:

Oh, it's your second bedroom?

Allie Arcese:

It's our guest room. Yeah.

Justin Draeger:

Can you move out of the way so I can see the bed? Oh, alright. It is made. Because over your shoulder it looked like your bed wasn't even made. There's a certain level of like I think, "Do I get dressed up for this Zoom meeting or not." Which I almost just never do anymore. And then the [crosstalk 00:42:30] second thing, I was like, "She didn't even make her bed."

Allie Arcese:

Yeah. [crosstalk 00:42:32] I see it's how you can see that like that corner there.

Justin Draeger:

Yeah.

Allie Arcese:

Yeah. No, I'm a bed maker.

Justin Draeger:

Oh, all right. I'm not. I don't make my bed because what's the hell's the point? I'm going to be back in it and-

Megan Coval:

That shocks me.

Justin Draeger:

Really? Why.

Megan Coval:

Yeah. Allie says it too. It's out of character for you.

Justin Draeger:

If I spent time in my bedroom, I would make it.

Megan Coval:

Okay.

Justin Draeger:

But I don't.

Megan Coval:  
You feel... Okay.

Justin Draeger:  
I leave my room, I don't usually go back in there until-

Megan Coval:  
Okay.

Justin Draeger:  
[inaudible 00:42:58].

Allie Arcese:  
Yeah. And I don't even want to get into the discussion again about throw pillows, but I imagine that's part of it.

Justin Draeger:  
Oh, my God. Yeah. Let's not, that's a trigger. I can't go to the decorative pillows and [crosstalk 00:43:13].

Allie Arcese:  
Justin is hashtag triggered.

Justin Draeger:  
And Megan, I do love the... Is this your kid's play room or what? This is where you take all meetings.

Megan Coval:  
Well yeah. The bummer about it is, is it's kind of. It's the playroom and I moved all this stuff for the [inaudible 00:43:32] yesterday. But like there's a TV, yes. This is where the bigger computer is, we have an iMac.

Justin Draeger:  
Yes.

Megan Coval:  
I really like working here. And also we only have two floors and it's just anywhere else is just chaos.

Justin Draeger:  
I just feel bad for your kids because you are-

Megan Coval:  
They're not in their play room.

Justin Draeger:

...constantly using this room that looks like their playroom.

Megan Coval:

Yeah. Well, the good news is our neighbors who were close, they've just left for Wisconsin for the summer, and we were watching their house. And they were like, "Hey, you guys can come over."

Justin Draeger:

Yeah. So you [crosstalk 00:44:02].

Megan Coval:

They're barely out the drive way and we're [crosstalk 00:44:05].

Justin Draeger:

Yeah. Locking kids in there, right?

Megan Coval:

Yeah.

Justin Draeger:

Yeah. From nine to five. See you at five kids. All right. Thanks everybody for joining us for another edition of Off The Cuff, remember to subscribe. Tell a friend, we will see you again next week. Have a great Memorial Day.