Intro:
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Justin Draeger:
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 the policy team.

Justin Draeger:
Welcome, everyone. We are T minus one day away from the DC area entering phase one of reopening. Everybody's obviously very excited. I also wonder whether anybody's going to, if you can avoid doing anything, whether you're going to do anything different. So it's day one, phase one, but what are you going to do?

Allie Arcese:
Yeah. They did a poll asking people, "Are you going to go to restaurants to dine outdoors this weekend or anytime soon?" And the vast majority of people said no.

Megan Coval:
Mm.

Justin Draeger:
Yeah, I'm thinking about over the weekend. Did you guys see that viral photo that was everywhere in Missouri in the Ozarks?

Jill Desjean:
Yeah.

Megan Coval:
Yeah.
... there were 50,000 people all crammed together in 100 square feet or so. It was-

Megan Coval:
Yeah. In a pool.

Allie Arcese:
Yeah, yeah.

Justin Draeger:
It was kind of crazy.

Megan Coval:
Sharing drinks. And yeah.

Justin Draeger:
Yeah. I don't know. Besides the divide between people who still have to work and those who can work from home, there's clearly a divide there and lots of socioeconomic things we could talk about with that, but there's also, I feel like, this divide in the country. And I see it when I talk to aid administrators. If you're not in a place where it's been hit hard, I think it's sort of like kind of, what's the deal? But around here, I do feel like, because it was a hotbed, that I feel like I don't know what's going to change this weekend.

Allie Arcese:
I would agree with that. And I have some family in Indiana on the outskirts of... I guess it's not like really that close to Indianapolis, but they live in a town called Elberfeld, Indiana. And my cousin was telling me that I think they only have two COVID cases at all. So it makes sense that there, people would be like, why are things so strict?

Justin Draeger:
Yeah. Which is kind of, again, goes to the reasoning you kind of have to tackle this regionally. It can't be a one size fits all solution. So the biggest issue I have for this weekend, I don't know that I'll do anything differently. I can't imagine the next time I'm going to go into a restaurant to eat. I was having germ issues under normal circumstances. I notice when the waiters are carrying my glass at the top, and their fingerprints are now where I would be drinking from. These are the things I notice in regular times, so it's better that I just get my food or my coffee or whatever and I'm out of sight, out of mind. I don't see what happened with this. I'm just taking it. But for me, and this isn't a political statement, it's not an ideological statement, it's the mask wearing, I'm really struggling because I cannot find masks that fit right. And I do it. I wear the masks when I'm... 

Allie Arcese:
Yeah.

Justin Draeger:
But they hurt my ears, or they're huge, or they keep falling down my face. I'm struggling with that.
Allie Arcese:
That's why I think so we bought masks, but we also have, and we talked about this before, those neck gaiters that you can wear for running when it's cold or just doing stuff outside when it's cold. And we've been using those way more, I think, than the masks because you can keep it around your neck and just pull it up on your face when you need it. And then just it doesn't go around your ears.

Justin Draeger:
Yeah. But the neck gaiters too, I can't turn my head and stuff because it falls down or it starts sliding down my cheeks. Maybe I just-

Allie Arcese:
It sounds like you're not wearing it right.

Justin Draeger:
Maybe I have a slippery face. I don't know.

Allie Arcese:
Yeah.

Justin Draeger:
I don't know what's going on here. Yeah, go ahead.

Megan Coval:
Well, are you guys in Northern Virginia? You're also going...

Justin Draeger:
Yeah.

Allie Arcese:
Yeah.

Megan Coval:
Because Jill and I are still in Montgomery County purgatory for the foreseeable... I don't know.

Justin Draeger:
Yeah, something's going on.

Jill Desjean:
We don't have a choice.

Megan Coval:
Yeah. Our commissioner is I don't know. He's supposed to speak today, though, I think, Jill.
Jill Desjean:
Yeah, yeah.

Megan Coval:
But we don’t know when we’re going to be...

Allie Arcese:
But I feel like DC, Maryland and Virginia, that whole area, they’ve been coordinating, haven’t they?

Justin Draeger:
Up till now [crosstalk 00:04:35].

Allie Arcese:
As far as reopening.

Justin Draeger:
As of last night, Maryland was still lagging. I don’t know what’s going on there.

Jill Desjean:
Yeah. We’re a hotbed, I guess.

Justin Draeger:
Yeah. Well, I sort of feel like it’s kind of silly because Montgomery County [crosstalk 00:04:48]. We’re all intermediate urban area.

Megan Coval:
Yeah.

Justin Draeger:
Just as a note, we will have NASFAA masks that have been ordered.

Jill Desjean:
Ooh, nice.

Megan Coval:
Oh, really?

Justin Draeger:
Yeah.

Megan Coval:
Do they look like your [crosstalk 00:05:02]?
Justin Draeger:
This is a preview. This is a preview, assuming no staff listen to this podcast. This is going to be announced at next week's all-staff meeting. But it seemed tasteless to do something like this months ago. But now, since everybody has to do it, it seems like a good idea.

Jill Desjean:
And if you can make it a little more fun.

Justin Draeger:
Yeah. The issue is, is where do you want the NASFAA? Do you want it across your mouth or off to the side. No, I just hope they fit. I think we all know comfort is my number one priority here. All right. So Allie, we asked for people to send us some comments and leave some voicemails. We did get some responses. I think we're going to cover two today.

Allie Arcese:
We did, yeah.

Justin Draeger:
All right, let's go to the first caller.

Nick Pruitt:
This is Nick Pruitt at Stony Brook University. I have a question for Off the Cuff, and it relates to the R2T4 guidance. I'm curious how the Department is going to handle loan forgiveness or loan cancellation. I have fears that it's going to turn into kind of a public student loan forgiveness. I'm uncertain if students are actually going to receive the benefit.

Megan Coval:
Yeah. So thanks, Nick, for the question. He is asking about the R2T4 waiver that was in the CARES Act that says that institutions and students don't have to return any grant or loan funds, and the loan money in this case would just be canceled. And his question is, what if this turns into another public service loan forgiveness type scenario, where we're talking about loan forgiveness, but then it's not really working the way that we've planned? There's a lot of confusion and frustrations. I think it's a really good question and understand why his mind would go there given everything that we've seen play out with PSLF. I'll tell you how I see this, and you guys can tell me if you think the same. To me, I think it's a little bit different because, for the student, it's essentially automatic. I understand that there's work that has to go on in the background, but the student doesn't have to do anything here, whereas with PSLF you had certification forms, lots of documentation, things like that. So I'm a little bit more hopeful that it won't turn into something like this.

Megan Coval:
I do add the caveat that we may see hiccups with this. So even with some of the other automatic things we've seen in recent months, like the wage garnishment and the stopping of payments and the issue last week with students having marks on their credit reports. So hiccups, yes, maybe, but I think I feel good in saying, in the end, students will be made whole on this one.
Justin Draeger:
All right. Jill, how about you?

Jill Desjean:
Yeah, I'd agree with Megan for sure. The reporting requirement for this that ED announced last week or the week before, schools were essentially giving ed a list of all the students who are eligible for the forgiveness. ED just has to go and forgive the loans. It might take time, but it's very different from PSLF, where there are 120 individual payments, that you need to make sure the student was employed at the right place, working the right number of hours, that they were in the right payment plan, that they made this scheduled monthly payment, that their payment was made on time. There was a ton of opportunity for both the student and for the servicer to make a mistake or trip up somewhere along the way. And this just seems much simpler as far as not having to go back and verify anything. Just work off the list. Forgive it. It's going to take time. I'm sure there will be some mistakes, but I wouldn't expect it to be the debacle that PSLF has been.

Justin Draeger:
Well, from your lips to the Secretary's ears. We've got two people here who are putting a pretty big vote of confidence that this will not have the snafus, largely because of the way it was constructed and process. I have some skepticism, but I'm going to be an optimist today and say hopefully this does go smoother than PSLF as well. All right, next question. Let's hear it.

Judy Hager:
My name is Judy Hager. I'm the Director of Financial Aid at the University of Jamestown in North Dakota. And my question is, can the institutional share of funds for the CARES Act be used to be awarded to international students or not? That's really unclear to us. Thank you very much. Thanks for your work. This is so helpful. Appreciate you guys. Bye, bye.

Jill Desjean:
Sure. So the question was about whether institutional share HERF dollars can be used for international students. And there's no surprise that there is confusion about this given the way the guidance has been rolled out on the CARES Act, especially with respect to citizenship requirements. So it's probably worth taking a step back and remembering what did happen. Congress, when they passed the CARES Act, didn't limit student eligibility for either the student share or for the institutional share of these funds. The Department, when they issued guidance on the CARES Act, decided to restrict the student share only of funds to those students who met the HEA section 484 student eligibility requirements, which of course included citizenship. But even then, that restriction and only applied to the student share of funds, so those direct emergency grants to funds. It didn't apply to the institutional share, unless, of course, the institutional share was being used to give emergency grants to students, like if the school decided to use more than 50% of their total funding to give grants to students. Then they'd have to follow the same student share rules. And of course, then ED went and made a statement just last week that said that they wouldn't enforce that guidance, so even though the section 484 eligibility requirements still apply, that they wouldn't enforce it.

Jill Desjean:
But ED also reminded schools that there's another law on the books completely separate from CARES, completely separate from any decisions ED made about regulating CARES, which dates back to 1996.
And it had to do with welfare reform law, welfare reform, but it restricted public benefit eligibility to citizens only, that non-citizens couldn't get that. And that's where we don't know. We don't know how that law applies to either the student share or the institutional share. ED reminded us that it exists, but we're not experts on that legislation. There's probably some room for interpretation there. So we can't give a firm answer yes or no on that, at least in my opinion. I think schools should work with their legal counsel and make a decision that works best with their school, their understanding of that law and their comfort with risk.

Justin Draeger:
All right. Thanks, Jill. And as a reminder, people can go to our website, www.nasfaa.org/COVID-19. Does anybody say www anymore?

Allie Arcese:
I think that's pretty-

Justin Draeger:
I'm way out of date

Allie Arcese:
... assumed.

Justin Draeger:
All right, nasfaa.org/covid19. All right. Let's get into some more news happening from this last week. We're still getting responses from schools about the Department's decision not to enforce their guidance related to Title IV eligibility. And I think maybe there's two things here. One is, we should highlight I know that our AskRegs team are getting a lot of questions about, well, if guidance doesn't carry the force of law and it's not enforceable, what about this and that and this and that and all these other instances? The Department's announcement really only focused on the questions regarding Title IV eligibility. So I think we want to make that piece clear. It doesn't throw out all their other guidance. It's really about enforcing this provision related to Title IV eligibility, which Jill just summarized a bit in answering the last caller's question. The second thing is when we wrote the article, Allie, there was a lot going on, so we put this article together. You and I just taped an addition onto the podcast, and it feels like the term Kafkaesque picked up a lot of traction.

Allie Arcese:
Yeah. It resonated with people in many ways. Man, you guys, when things happen like this late at night, it's really a team effort. Here's a glimpse behind the scenes. I wrote a shell, basically, for that article with some background information and the highlights of what had come out, and then the policy team jumps in and adds some of the details and clarifies some of the wonkier things. And often when it's something big like this, even Justin will hop in and take a look as well. And I don't know why one word was so fixated on, but I started getting a lot of messages on Twitter and email and various forms from people who really enjoyed the use of the word Kafkaesque. Others did not like the use of the word Kafkaesque.

Justin Draeger:
People didn't like it?
Jill Desjean:
I only got people saying that was amazing.

Allie Arcese:
Yeah. And a lot of people were like, oh, that was so great and tagging me in it. And I was like, unfortunately, I cannot take credit for that because that was an addition from Justin.

Justin Draeger:
I think that’s the only edit I made to the entire article, actually.

Allie Arcese:
Yeah. Yeah.

Justin Draeger:
I think I added [crosstalk 00:14:25]. Let me just remind people. So a lot of people won’t know who I’m talking about here, unfortunately, but a lot of NASFAA members will remember Larry Z., who used to run our public policy and advocacy team along with Dallas Martin, long time NASFAA President. And the thing I remember about Larry Z. and also Joan Berkes, who retired from NASFAA a couple of years ago, is when they would write things to the NAFASA members, it was not necessarily always sanitized. They would add flavor to it. And you could pick up on their feelings or frustration in the article. I was thinking about Larry Z., actually. He, unfortunately, passed away just a couple of years ago, but Larry Z. was the guy I came in under at NASFAA, and he was a very colorful guy. But I was thinking about him, and then all this thing broke. And I think in my subconscious, we were frustrated, so I just threw in the Kafkaesque rollout of the CARES funds. And that was me just sort of honing in on the Larry Z. part of my upbringing.

Justin Draeger:
For those of you folks who don't know, Franz Kafka, he wrote lots of things. And if you did a liberal arts education, I'm sure you're familiar with him. But the thing that I always remember is he did this novel called The Trial, and if you want to learn more about it, you can look up Kafka on Urban Dictionary, which I think has the best summary of a Franz Kafka novel. But it's basically a guy who is accused of a crime. He has no idea what the crime is. It's publicly made known. He tries to go through all these bureaucratic processes to get out of it. And at the end of the day, he's like, I don't know if I should ruin it or not, but he's about to be executed for this crime that he has no idea what the crime is because he's stuck in bureaucratic red tape. So it's sort of taken on the meaning of extreme crushing bureaucracy that makes no sense.

Allie Arcese:
Yeah. Like nightmarish illogical.

Justin Draeger:
Right. [crosstalk 00:16:29]

Allie Arcese:
... other synonyms. And one other thing I wanted to throw out there too, I know some people expressed frustration with the use of that word, and I'm assuming that Kafkaesque was what was referred to in
some of the comments. And I may be wrong, but some folks felt like it was maybe a political statement or taking jabs at the Department. And I would just say NASFAA has always been critical of the Department when appropriate, regardless of the administration. And a good example of that would be with gainful employment under the Obama administration, so it’s not because of this current Department or administration. It’s just it is what it is.

Justin Draeger:
Yeah. I always sort of feel it. I get it. I'm empathetic to it. We live in extreme, heightened political times. Like I said earlier, wearing a face mask in some parts of the country is a political statement anymore, which is crazy to think about. So I get people look at things through a political lens, and politics is just the art of persuasion. So in that sense, yes, we do try to persuade lawmakers and regulators. We have positions. But we aren't political in the sense that we align with a political party. I always say this, I don't say it with a wink or a nod. And yeah, we've gone toe to toe with the Department under Democratic administrations and Republican. So I feel like that's sometimes more of a reflection of how an individual is feeling and some things hitting them versus NASFAA. We have a board of directors of all political persuasions, and NASFAA is not political in that way.

Allie Arcese:
Yeah. And that being said, we don't want to make our members feel uncomfortable or anything, but I think that it was a reflection of how people were already feeling given the survey that we had done asking about the guidance from ED.

Justin Draeger:
Oh yeah. If this isn't a good example of Kafkaesque policy, I don't know what else is. It's literally coming out and saying one thing, something else, two weeks later, and then four weeks later saying you're not going to enforce any of it. That is a Franz Kafka novel in 2020. The Department of Education did respond to some lawsuits about CARES Act distribution and who is eligible, and I do think there's a little bit of gaslighting in there. Megan, why don't you catch us up on how the Department responded to these lawsuits about student eligibility for CARES Act emergency funds? And then we can circle back and hit the main points.

Megan Coval:
Sure. So they responded to the lawsuit that's brought against them from the California community colleges. There are a couple of happening right now, and they filed that paperwork on Monday. And I think we were all eagerly waiting to see this because we were all looking to what are they going to point to, and this was related to saying that the CARES funds had to, that students had to meet Title IV eligibility and also address the undocumented piece. And basically, in their filing, they came out and kind of pointed to two things. First, they said, hey, this is only preliminary. We never said that this was final. And we may have more that will come out on this. So you California community colleges who are, I'm totally paraphrasing here, getting all worked up over something that we didn't even say was final. It's not the end. This is a huge job for us to get all these funds out. And then they're also saying, and by the way, we specifically said, we aren't going to enforce this Title IV piece. So you're bringing out this case against us, and we're telling you you don't even have to do it anyway. So this is all nonsense. So to the judge, this is all nonsense. They don't have to do it anyways. And yeah, I think that's-

Justin Draeger:
Yeah. I want to hit on that point, Megan, because here's to quote the Department. So at the time the California community colleges filed the lawsuit, the guidance was they had to be Title IV eligible.

Jill Desjean:
Right.

Megan Coval:
Yes, yes.

Justin Draeger:
Okay. So the department then changes that later and says they're not going to enforce it. They didn't change the guidance. We should be clear. The guidance is the same, but the department says, "The only hardship that plaintiffs could support is thus one that results, not from the guidance, but from their own decisions," from the community college's own decisions. As if know the community college is erring on the side of denying eligibility in a restrictive way. So that is gaslighting.

Allie Arcese:
Well, yeah. Let's just back up the timeline. So early April, April 3rd, they released the funds, the certification form, whatever. Schools can start applying for the funds. They give broad leeway for how schools can distribute the grants. Schools start applying, and some even receive the funds. Meanwhile, and I think this was happening before the April 21st guidance, there was pressure coming down for schools to get these funds out ASAP. Then the Title IV guidance comes out, and then the lawsuits start happening. And it's just like you're pressuring schools to get it out as soon as possible, changing the guidance every couple of weeks, and then saying you jumped the gun.

Megan Coval:
Yeah. And the timing, the timing is no mistake here. and we all suspected this. I think, Justin, you brought it up on Thursday night when we were looking at this, I'll call it the update that came out, that they said they weren't going to enforce this. They point left and right to the fact that they've publicly said they aren't going to enforce the 484 requirements. We've told people that. You told people that five days ago, four days before you submitted your court filing. So yes, I guess, technically, but I've got to believe that any good judge will take into account the timing.

Justin Draeger:
I guess, the thing is if it's resolved, it's resolved. So if the Department has basically backed off, then fine. That portion of the lawsuit, this still doesn't get at the DACA issue as Jill talked about, but if that portion is resolved, so be it. I just don't like the fact that it's like, oh, you just misread everything. This is on you, not us. It's not like, oh, we changed, we've said publicly we're not going to enforce this, so this should be resolved. That to me would be sort of a, I don't know, perhaps a more honest way to approach it. And I don't know what they lose by saying that either. But to say it's not us, you totally miss misunderstood everything we've...

Jill Desjean:
Yeah. [crosstalk 00:22:53] It's really yeah.
Allie Arcese:
The thing that I keep coming back to also is it's the end of May. Students have started leaving their campuses in the middle of March, and from that point, I would think that is when they started incurring any financial hardship and would have been in need of these grants. I don't know. I haven't seen the latest numbers on how much of the funds have gone out already to schools or to students. But it's like, at this point, again, with the lawsuit, this can the only be useful for future [crosstalk 00:23:25].

Justin Draeger:
Yeah. I think you're right, Allie. And there's really three options here. One option is that with this enforcement stuff, I think we talked about this maybe before, but, one, schools might change their methodology. Two, for schools that did give it to non-Title IV students, maybe they have a Safe Harbor. Or three, schools haven't given it out, and they will adjust accordingly. So we did a completely non-statistically representative poll yesterday with about 28 administrators, aid directors, and the poll results were, we asked them, will you be dispersing funds to non-Title IV students given ED's new statement that they won't be enforcing? 75% said they would not, that they're still not going to because the money either already left the door or they're already too far down the road. The ship has sailed. They've already gotten sign-off from their boards of trustees. The money's gone, or it's about to be gone. I was asked by a reporter this last week. Well, are schools, are they relieved that the Department has said this? And I'm sort of like I don't get the sense of relief. I get confusion. I get frustration and resignation, which is kind of whatever. The ship has sailed.

Allie Arcese:
Yeah. I did see online that night when the new statement came out that people saying it's a little late.

Megan Coval:
One thing I think that is some good news is that... So the hearing is June 8th. And usually, I don't know about you guys, but when I think about something being in the court system, I think about things taking a very long time, moving like molasses. But I did talk to Annie Cartwright, who I call her an attorney friend of NASFAA, and she was saying that she feels like in a case like this it's possible the judge will hand down the decision on the injunction piece that week, so the fact that they've had all of the briefs and had time to review them and that it's a high profile case. So I agree that, by and large, the ship has sailed, but at least we won't be waiting months on this.

Justin Draeger:
We could see a preliminary ruling-

Megan Coval:
Yeah.

Justin Draeger:
... really quickly. Okay.

Megan Coval:
Yeah.
Justin Draeger:
Well stay tuned for more from that. And people can certainly check out our COVID page and continue to send us questions and check in with AskRegs. Let’s keep moving here. A letter from a bipartisan group of senators recently went up to the department, and it’s notable because, one, it was bipartisan. So this would be Senators Hassan and Booker, Democrats, and Senators Tim Scott and Kelly Loeffler. Sent a letter up to Secretary DeVos basically saying four things. One, they acknowledged that, because of all the people who are completing a FAFSA right now for the 2021 year or have recently completed a FAFSA, their current income may not be accurately reflected on the FAFSA. So that was the first thing that they acknowledged, and they point to the fact that there’s a 15% unemployment rate right now.

Justin Draeger:
The second thing they do is point to a DCL that I think we’ve talked about on the podcast previously, which is GEN-09-05, that’s regarding Professional Judgment, and it allows schools to zero out income for independent students who are receiving unemployment benefits. And so they point to that Dear Colleague letter, and they ask the department to reissue guidance similar to GEN-09-05 regarding Professional Judgment. I know we’ll talk more about that in just a moment, but I think it’s pretty notable when senators pick up on an ED announcement, especially one that’s over a decade old and say, hey, we think it’s important to reiterate this. They also ask the Department to include accommodations and documentation, include accommodations for documentation requirements related to people who’ve applied for unemployment benefits but haven’t received them because of the backlogs that exist in the states.

Justin Draeger:
The third thing they asked the Department of do is reach out to schools and encourage them to proactively talk to students about Professional Judgments, which is something we saw the Obama administration do, so that there would be precedent for that. And then the fourth thing, which is sort of interesting to me, and I don’t even know if it’s possible, is they asked the department to make changes to the 2021 and 21-22 FAFSAs. Now, the 2021 FAFSA, that ship has sailed as well. That’s been active for, what, six, seven months now, since October.

Megan Coval:
Yeah.

Justin Draeger:
But what they want is a question that's temporarily added that asks, "Was your income significantly reduced due to the COVID-19 emergency?" And I don't know. Usually, the Department is loading out and working on FAFSAs months and months and months before they go live. They have to go through public comment and testing, and then they finally move to a live environment, which is why it’s always so difficult to get FAFSA changes in, because once you have the idea, it's usually another FAFSA cycle or two or sometimes three before that can be implemented. So I don't even know the feasibility of this, but I do think it's interesting that we have folks in Congress who are asking the Department to add a question that would basically flag Professional Judgment for aid administrators. And so I think that's all notable for all of those reasons. We'll see what the Department's reaction to this is. This letter just went up to the Hill last week, May 27. What is today?

Megan Coval:
Yesterday.

Justin Draeger:
Oh. It just went up to the Hill yesterday.

Megan Coval:
Yep.

Justin Draeger:
So yeah, it's fairly new, and we'll see what, if anything, comes of it. But Jill, I want to turn to that announcement they referred to, GEN-09-05 regarding Professional Judgment. It seems to me there's a bit of a debate about what to do with this announcement.

Jill Desjean:
Yeah. So it's obviously quite old. It applied to a recession that was happening at a point in time that did end. We've been hearing from some members who are wondering whether this DCL is effective because it's been marked for historical purposes on IFAP, which essentially means that it's been rescinded or is no longer active. So it should be a pretty clear cut thing. It's not active. It doesn't apply anymore. The thing is ED has, in the past, referred back to that DCL GEN-09-05 several times since then, back in 2010, 2011 and in 2016. And they refer back to 09-05 as being still active. And so most recently what we saw was GEN-11-04 that said that GEN-09-05 was effective until further notice. ED also continues to refer back to GEN-11-04 in their presentations and in their guidance. In fact, in the 2021 application and verification guide, which came out a couple of days ago, last week, it refers to DCL GEN-11-04 in the context of using PJ for people experiencing unemployment, which is exactly what 09-05 covers. So it seems to be implying that, even though it's referring back to a different DCL, that is the DCL that says 09-05 is still applicable.

Justin Draeger:
Right. So let me look because when you guys laid this out for me, I was having a little trouble following it. But if I'm following right, we have a DCL about Professional Judgment that gives schools significant leeway, for independent students at least, that's been archived.

Jill Desjean:
Right.

Justin Draeger:
Okay. So that's archived for historical purposes, but then we have a DCL that is active that's not been archived that points to the archived DCL and, in the latest handbook, they're also pointing to the DCL that points to the archived guidance. So it's like when is something truly archived? And there's been no notice of rescission, right?

Jill Desjean:
Right. Right.

Justin Draeger:
There's been nothing the Department has said this is now rescinded.

Jill Desjean:
Right. And there's other guidance that is marked as for historical purposes that is still active. One example is GEN-13-02 that refers to regaining Title IV eligibility after you exceed your annual or aggregate limits and also what to do if a student has a Direct Loan disbursement and never begins enrollment. And the most recent handbook refers back to that guidance, and people use that kind of all the time. It's still active, but it's marked as for historical purposes only. So even marking something as historical doesn't necessarily mean-

Megan Coval:
A cataloging problem.

Jill Desjean:
Yeah.

Justin Draeger:
Yeah, what's the definition of archived for historical purposes I wonder.

Jill Desjean:
It didn't really seem to have much of a purpose.

Megan Coval:
Yeah. And normally, archive doesn't mean it's not effective. When you think about the way that we use archive now, that we archive email, but we can still go get it.

Jill Desjean:
Sure, right. Yeah. No, even I was listening to a presentation the other day from the Department, and they were like, some of this has been archived, but it's still available. You can still look at it.

Megan Coval:
Yeah.

Jill Desjean:
What should we do with it?

Justin Draeger:
This isn't necessarily a ding on the Department as much as a somebody needs to what's happening with the [crosstalk 00:32:41].

Jill Desjean:
Yeah, yeah. Yeah.

Justin Draeger:
Because if you're a school, you could potentially read it either way.

Jill Desjean:
Yeah.

Justin Draeger:
Okay. Jill, let me ask you another question here. For practical purposes, though, so this GEN-09, what is it, GEN-09-05, it's been archived and now is pointed to by active guidance, do the schools need that to actually exercise the Professional Judgment leeway that it provided. Professional Judgment is so much in the school's hands. The school can exercise Professional Judgment as it relates to income with significant leeway. In fact, can the Department even regulate Professional Judgment?

Jill Desjean:
That's a good question. Yeah.

Justin Draeger:
And so I guess my question is what's practical? Does the school actually need this guidance to actually do what the guidance said it could do?

Jill Desjean:
I would say yes. Certainly on a case-by-case basis, you could decide that a student who was receiving unemployment insurance benefits, you could zero out their income, zero out their unemployment insurance benefits and just recalculate their EFC, give them [inaudible 00:33:48], be done with it. This guidance does seem to sort of give schools the authority to develop a broader policy of treating all students who have become unemployed in the same way, and that is the thing that you can't do with PJ. PJ has to be done on a case-by-case basis, so it seems to be letting up on that case-by-case piece. And that's where I would say the guidance is important. If a school wanted to establish a broad policy to just say anytime someone gives you documentation of unemployment, you automatically take these steps, that would not be case-by-case treatment. And that is what GEN-09-05 permits.

Justin Draeger:
Okay. So at the very least, it paves the way for a school to processes these in sort of a, at least, some sort of bulk processing, which...

Jill Desjean:
Yes.

Justin Draeger:
Yeah. And I was just looking back up, Professional Judgment is now one of the most popular topics in our student aid index. The Department is prohibited from regulating Professional Judgment, but these pieces of guidance give schools an indication of, again, this sort of bulk processing that could take place. So we will see what the Department says. The letter from the senators just went up yesterday, and NASFAA has been in touch with the department as well. So our preference would, of course, be that this guidance continue to live on, and we'll see if the Department comes out with anything and publish it in
today's news. Wrapping up this week, Megan, it sounds like the president is going to have to make a decision about Borrower Defense. You want to catch us up?

Megan Coval:
Yes. So we talked about this last week. It is the Congressional Review Act decision on Borrower Defense is on the president's desk and he has to decide whether he is going to veto it or sign it, and that deadline is coming up soon. And this week, Speaker Pelosi, I think in anticipation of a veto, scheduled a vote for the House to take on July 1. So unclear if they will need that or not, but I think she's getting her ducks in a row and kind of maybe sees the tea leaves a little bit that it's going to be coming back to Congress.

Justin Draeger:
All right. Thank you, everybody, for listening, Allie, I think we're going to open up that phone line again for people that want to leave us a message, be on the podcast, ask us a question about anything related to NASFAA, the podcast or CARES Act implementation. What's that number again?

Allie Arcese:
It is 202-785-6954.

Justin Draeger:
Okay. Dial in, leave us a voicemail. Maybe you'll make it on the air. Thanks for listening to Off the Cuff. Remember to subscribe. Tell a friend. We will see you again next week.

Outro:
Whoo!