

NASFAA's "Off the Cuff" Podcast – Episode 240 Transcript

OTC Inside the Beltway: Legal Challenges Look to Create Roadblocks for Debt Cancellation

Speaker 1:

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Justin Draeger:

Hey everybody, welcome to another edition of Off the Cuff. I'm Justin Draeger.

Karen McCarthy:

I'm Karen McCarthy from NASFAA's policy team.

Jonathan Fansmith:

And I am Jon Fansmith from the American Council on Education's Government Relations Team.

Justin Draeger:

Good to see you both for... I don't know how long it's been since we've done an Off the Cuff policy one, because we skipped September because we had just done one like a week or two before, I think, Hugh. So we are back before Thanksgiving and December, obviously lots of breaks in there. So this may be our only fall... No, we're going to be way more consistent. We're going to aim for consistency here. Jon, first thing I want to say is I've seen you more in the last week than I've seen you in the previous six months. So good to see you, again.

Karen McCarthy:

Like in person?

Jonathan Fansmith:

In person more than we've seen each other in probably three years, so.

Justin Draeger:

Yeah, in person.

Jonathan Fansmith:

Yeah.

Justin Draeger:

And let me ask you, Jon, when you see somebody... Because Karen, you and I see each other a couple times a week and you were actually here this week and you were here last week. But when you haven't seen somebody, especially from the pandemic, are you doing any assessments? Like, "Okay, let's see. How has this person aged through the pandemic? How are they doing?"

Jonathan Fansmith:

I am especially sensitive as to how I look to people, so most of my time I'm trying to gauge what their reaction to me is. I'm a lot more gray than I was at the beginning of the pandemic.

Justin Draeger:

Yeah, yeah. True.

Jonathan Fansmith:

I can see people's eyes are starting go up to the side of my head rather than my eyes. Gauging that.

Justin Draeger:

So when I saw you for the first time in person on Monday night at a reception, and what did you gauge from the way that I looked at you?

Jonathan Fansmith:

Pity. Mostly pity.

Justin Draeger:

Yeah. Okay good. Well it came through. I didn't even try to disguise it.

Jonathan Fansmith:

Good, good, good.

Justin Draeger:

So. All right.

Jonathan Fansmith:

You rarely do.

Justin Draeger:

Yeah. All right. No, I thought you didn't... Actually, first of all, I'll say as I'm speaking as a man here, but Jon, I didn't really notice the gray and now that you say it, I do notice it, but you're in a very enviable spot because I think in a career for a man, the salt and pepper is very much, that's sort of the ideal. And you only get that for a few years. Some people don't get it at all because they lose their hair. Nothing against that.

Jonathan Fansmith:

I will say, I'm not averse the gray because I am a baby face. Generally, people tend to underestimate exactly how old I am. So the gray is sort of helpful in that regard.

Justin Draeger:

Yeah. You look young for 56 and I've always said that.

Jonathan Fansmith:

Well... And a lifelong smoker at 56 too.

Justin Draeger:

Yeah, right. And sun bather, so... That's right.

Jonathan Fansmith:

I tanned in the machine mostly. Yeah.

Justin Draeger:

The one thing I will say is, so for those who don't know inside the beltway, there's like, I don't know, 35 or 40 higher education associations representing everything from college presidents to our colleagues over in the business office and the admissions counselors and everything, campus housing, the technology folks. So anything you can think of on campus, there's like a national association for, and we all collectively formed something called the Secretariat, which is convened by ACE and Jon's folks over at one DuPont. And so we had this reception, and correct me if I'm wrong, but times are a changing, and here's the one thing I noticed on Monday night, a lot of people, a critical mass of men did not have ties on. And Tuesday, Jon, which you were also at the actual retreat part. Tuesday, even fewer ties. Did you... And I'm not making this up. And this would be a sea change, right? Yeah.

Jonathan Fansmith:

So I would say Tuesday, which was the more formal part of it, I thought there were a higher percentage of people in full suits and ties. The reception, I'm with you. There were not that many ties, but there are also sneakers, which is sort of unusual. There was a real kind of aggressive casualness about the reception. I thought the retreat was much more formal. Although I didn't wear a tie, I didn't wear a tie. I backed up your position, Justin.

Justin Draeger:

That's right. I tried to Monday night circulate and tried to build support for getting rid of the ties. Now I was supposed to be up on the Hill today for a meeting and it got canceled last minute, whatever, that happens. And I'm still wearing a tie up on the Hill. I assume you are too, Jon, when you go.

Jonathan Fansmith:

Oh yeah, of course.

Justin Draeger:

Yeah. Okay. Well... So we haven't changed that. We haven't changed Congress, Jon, but we are changing lives and I just want to thank you for your support, and let's hang in there for that fight. Okay.

Jonathan Fansmith:

I will just say Justin, I'm a reluctant convert to your cause.

Justin Draeger:

Because you like the tie.

Jonathan Fansmith:

I like suits. I'm a fan of suits. I've always said that I like suits. Oh yeah. I mean there is nothing...

Karen McCarthy:

Is it because it's easy?

Jonathan Fansmith:

Absolutely. Pull a suit out, a shirt and a tie. It's super easy to put together and it looks good. So yeah. Pro suit. Sorry, Justin.

Justin Draeger:

I just wish they had more flexible waistbands and that you could turn them in...

Jonathan Fansmith:

I'm sure you can find what that does.

Justin Draeger:

Well, I mean, not a high end one, but yeah, you're probably right. And that they could turn into shorts. I could wear a suit jacket and pants if...

Jonathan Fansmith:

I think there's hiking pants that you can unzip the lower part. Yeah.

Justin Draeger:

Yeah. That's right. You got it.

Jonathan Fansmith:

That'd be good luck. You should try it out.

Justin Draeger:

I'm not going to turn this into a sports podcast, but the other thing I wanted to mention, because Jon, I do know that you follow the NFL pretty closely. I think you follow baseball pretty closely. I know a lot of people at ACE do. So I assume to fit in, you have to. I know Terry does. So did you both see Aaron Judge's 62nd home run this last Tuesday?

Karen McCarthy:

I didn't see it.

Justin Draeger:

American League record for home runs, not the National League because of all the steroid use and...

Karen McCarthy:

I just heard about it, read about it. I didn't actually see it.

Jonathan Fansmith:

I will say as a Philadelphia sports fan who's married to a Boston sports fan, celebrating the accomplishments of the Yankees player is pretty low on my list of things to do.

Justin Draeger:

All right. Well so leaving the sport aside, whatever, great, that's fantastic. Whatever. I'm happy for that. But the part that was most interesting to me is they were speculating before the game that ball was going to be worth a million dollars plus. And I think since Tuesday he's gotten a \$2 million offer on that ball. But when the home run happened, I like keyed in directly on who was going to catch it because I thought that's a big... That's a million dollars you just caught.

Jonathan Fansmith:

Right. That's a lottery ticket.

Justin Draeger:

Guaranteed, yeah. And you're in a stand with 50,000 people.

Karen McCarthy:

And children.

Justin Draeger:

And children. What does the children have to do with it?

Karen McCarthy:

Well, because you always see...

Jonathan Fansmith:

They're easier to shove out of the way.

Justin Draeger:

What are you getting at?

Karen McCarthy:

You always see videos of people climbing over little kids and stuff.

Justin Draeger:

Oh yeah. This is not the ball you hand to the kid who's standing next to, pitifully, with their hand out, no, but I thought there's a chance. Have you ever gone to the ATM? The most I've ever gotten out. I think my limit's like 400 or something and I get \$400 out of the ATM for, I don't even know why, in the past I've done this and I don't know, I feel like, oh my God, I'm going to be robbed at any moment.

Karen McCarthy:

Yeah, I feel like that too.

Justin Draeger:

It's \$400. Or I guess the more likely scenario is I'm going to lose this \$400. That's way more like... But can you imagine catching a million dollar ball? I don't know. But the security descended on him immediately, and escorted him out. I mean, they were on top of it.

Jonathan Fansmith:

I'm also sort of surprised that there is no major league baseball policy for things like that, that are historic, that you essentially, by buying a ticket, you waive your right to certain things. They can't grab that back and give it to Cooper's Town or something along... It seems...

Karen McCarthy:

Yeah, that's true.

Jonathan Fansmith:

Like a promotion of violence to say, let's let all these people crowd into one section and this \$2 million ball has got to come flying in. Whoever winds up with it is going to be rich. I mean...

Justin Draeger:

Thank God, Jon, you don't work for Major League baseball. I mean, way to ruin the game. I mean, if you're not going to be able to catch a ball...

Jonathan Fansmith:

I'm pro pitch counts too. Or a pitch timer.

Justin Draeger:

Well, I follow baseball like I follow the NFL, which is to say I know who the teams are and I know who the big players are but both those leagues are in need of some major rule changes, all of which focus on speeding up the damn games. I cannot invest four hours in a game, in one game. That's why I'm pro NBA and I reluctantly do get sucked into college football.

Let's back out of being a sports show and talk about higher ed student aid policy for just a moment. Since the last time we've done a podcast, a lot's happened. Remember the good old days when we were like, they're going to do loan forgiveness and who might sue? Who would even have standing? Will there even be a lawsuit? Those were such quaint times I feel because today, Jon, how many lawsuits do we have?

Jonathan Fansmith:

We are up to four lawsuits at this point.

Justin Draeger:

All right, so run through quickly. 1, 2, 3, 4. And who's suing and what is the main reasoning behind the lawsuit? What's the legal hook they're hanging on?

Jonathan Fansmith:

Yeah, and it's interesting too because we talked about standing. Each one of these lawsuits has a different argument about how they're being harmed by this decision. So the very first one out of the

gates, probably the one that got the most attention so far, was a lawyer for a libertarian foundation who is a resident of Indiana, which is a state, one of six states in the country, for which loan forgiveness would be a taxable benefit. So he would have to pay state taxes on the amount of money forgiven, the \$10,000 or 20,000. I'm not sure whether he's a Pell recipient or not. His argument, he was enrolled in PSLF. So he had provided income data to the Department of Education, which meant he was one of those 8 million or so who would automatically be given forgiveness. He wasn't frankly going to be asked to whether he wanted forgiveness or not. So his argument was, "Look, I'm going to incur this tax bill, I think it's somewhere around a thousand dollars, whereas if I just ride out my four more years of PSLF, I'll have it all forgiven tax free."

We'll go through all four of the lawsuits. I want to come back to this one for a second, because I think what ED did is really interesting in this context. The second lawsuit, second and third lawsuits were by State's Attorneys General. The second one filed was by six states' Republican governors in those states, their argument, couple different things. One was a federalist basis that the federal government is exceeding its authority with implications for the states, primarily saying there will be revenue implications for our states of forgiveness that we will be harmed by this.

One of the things like Missouri is one of them, and MOHELA has ties to the state government. There's revenue that's generated through their operation. So there's sort of a financial hook there that they're hanging their head on. Third lawsuit was by the Attorney General of Arizona. This is my favorite... Well, actually, yeah, this is my favorite one. Their argument is that because public service loan forgiveness is a great recruitment tool for people entering public service, by forgiving loans instead, people won't pursue government service because public service loan forgiveness is less appealing to them. They will... If loans are being forgiven, then they won't have that as a recruiting. We've actually heard people talk about this for the military too, that forgiveness undercuts recruiting for the military. I think, you can put whatever weight you want on the validity of those arguments.

Justin Draeger:

And also just a little how perverse they are. It's like, well, people are in servitude. Here's a way to get out and now you're inhibiting our ability to lift people out of that.

Jonathan Fansmith:

We need them to be desperate to do these things for us.

Justin Draeger:

Yeah, I mean there's something a little...

Jonathan Fansmith:

If you make them less desperate...

Justin Draeger:

Yeah, right. Okay. All right.

Jonathan Fansmith:

The fourth one is probably the one, honestly, that's maybe the most offensive. There is a group in Wisconsin, I don't know if it's like a foundation or a nonprofit or a law firm. I think it's a law firm. I don't know much about this group, never heard about them before, but they filed and they had two

arguments. The first argument is that because taxpayers, all American taxpayers will have to theoretically pay more in taxes because the cost CBO says \$400 billion is what this forgiveness will cost. It will cost taxpayers more. Doesn't make a whole lot of sense because it doesn't incorporate a change in tax laws. Your tax burden doesn't change as a result of this. Just that we owe 400 billion more on our \$31 trillion in existing debt. The second part of the argument is the one that's really pretty problematic. They said it's racially discriminatory because Black borrowers have higher levels of debt, are disproportionately likely to have received Pell Grants to get the additional \$20,000 benefit. Therefore, by closing the racial wealth gap, which the department and the administration have talked about is an objective of what they're doing...

Justin Draeger:

They're saying that's a feature, not a bug.

Jonathan Fansmith:

They are saying it is racially biased if it promotes closing the wealth equity gap between Black and white borrowers and so that this is a racist policy, racist against white people, I guess, with greater family wealth. Maybe not the cart you want to hitch your horse to, but that's what they're going with. So those are the four lawsuits. Very, very different.

Justin Draeger:

All right. So let me go back to the Arizona one for just a moment. One of them, and I thought it was the Arizona one, is challenging the legality of President Biden's use of the Heroes Act. Is that right? Is that the one, or have they all mentioned the fact that they're saying Congress never intended this law passed after 9/11 to be so expansive to give out \$400 billion in benefits?

Jonathan Fansmith:

Yeah, to be honest, I don't know if the Arizona one is, I'm pretty sure that the six States' Attorneys General, they include that because that's part of their federalism argument. There's no legal authority for them to do this in the first place and they're exceeding their authority.

Justin Draeger:

So you're not an attorney, Jon, but you look like one. Which of these four do you think has the most merit? I mean, you and I and Karen, we've all been reading about it, but some of these... The first one for example, already went and they asked for an injunction on all of this. The judge rejected it immediately. Some of that's probably because of changes the department made, which we'll talk about a second. But of the four, do any of these four seem like they'll get some legs?

Jonathan Fansmith:

Yeah, I mean, I think the only one that seems to have a good chance would be the one by the six states, right? Because they can actually point to the fact that if MOHELA has fewer servicers, there's less revenue available to the state, the state will experience some financial harm. Again, I'm not a lawyer. I think there's probably a whole lot of case law about how federal actions might impact state budgets that gives a lot of discretion to the federal government in that area.

It would be really hard to implement, frankly, any federal policy without there being some sort of resulting financial impact on one state or the other. So I don't know that that's got the legs to go

forward. I think with most of these cases, what you've seen is less, "We've got a rock solid case. This is something, there's real harm here." It's motivated, it's politically motivated. They're hoping to get something into a sympathetic courtroom that can get them into a sympathetic appellate court and hopefully before a sympathetic Supreme Court. But they're mostly all long shots. That seems to be my understanding of what legal actual lawyers think of them.

Justin Draeger:

So the question that I think people have thought about maybe in a binary sense with lawsuits is like, okay, somebody files a lawsuit, maybe there's an injunction, it has to go to court, it's binary and it goes forward or it doesn't. But if you were asking whether these lawsuits are having any impact, the answer is, yes, it is definitely having an impact because the department has changed some of its criteria. Karen, can you catch us up on some of the things that the department is changing in response to these lawsuits?

Karen McCarthy:

In response to the first lawsuit from the lawyer from Indiana that Jon just talked about. So his chief complaint is that he fell into the category of borrowers for whom the department already has his income information. So he would be an automatic qualifier for the debt cancellation. And his complaint was, they're going to automatically forgive me under this particular program and then I'm not going to get the taxation benefits under PSLF. And in response, the department basically added an opt out feature for the automatic qualifiers. They said nobody will be forced to take debt cancellation as part of the application process. Somebody who is in this automatic qualifier category would be able to say, "No thanks, do not cancel the 10,000 or \$20,000 that I am eligible for." So they basically put this process in place in response to this lawsuit as to defeat his argument, I would say.

Justin Draeger:

Yeah. So, opt out, fine. Yeah, he can just opt out. He doesn't need to... Okay.

Karen McCarthy:

So I think they're now developing... We don't know what that will actually look like. We don't know what the application at all will look like, but I assume that they are incorporating this into their application that we'll see sometime this month.

Justin Draeger:

All right. Yeah. So Jon, what do you think about the department's change?

Jonathan Fansmith:

No, I mean, I think Karen had it just right. I mean, the department clearly saw the challenge, the legal challenge coming, thought there might be some merit. Whether it would ultimately be successful, it's an easy sort of change to make that cuts off that line of approach. So it doesn't fundamentally change the program self. Unlike the consolidation piece, which I think is probably much more significant to borrowers, you had an opt out and all of a sudden this case essentially collapses. In fact, when the plaintiff asked for an injunction, the judge kind of said, "Look, you haven't really demonstrated that you'll experience real harm here. Also, they haven't even implemented the program. So let's maybe wait and see before you come forward and say you're being harmed by something that hasn't started yet."

Justin Draeger:

There is no program. Right. It's rolling out.

Jonathan Fansmith:

Right. There's no program in place.

Justin Draeger:

The second one was preemptive, and the department had basically said that as of September 29th, the day of that announcement, any FFEL borrowers or Perkins borrowers that were owned by schools. So these are basically loans that are held by private entities, could no longer consolidate into the direct loan program and receive forgiveness. And the way that this was couched was preemptive because the other entities that could say that they were materially harmed by this are all the loan holders of these loans because they'd be leaving direct loans or they'd be leaving for direct loans and, or receiving forgiveness. What do you think, Jon? I'm sort of struck that it was preemptive and such a huge reversal because a lot of borrowers were waiting in place... I mean, otherwise they would've consolidated. I'm sure they would've consolidated a much larger numbers. So this reversal has pretty big impacts for the, I don't know, six to 9 million borrowers that it'll impact. What do you think?

Jonathan Fansmith:

Yeah, no, I was surprised about the reversal. I understand why from a legal basis that they probably were told this is the way to head off some of these lawsuits. But we kind of went through something similar like this with the repayment pause about the FFEL... If you have FFEL lenders who had the loans, they were exempted from the repayment policy. So it's not like the department, this snuck up on them. They had to know they'd have issues with who was exactly holding the loans and what they're doing with them. And so to get that out there, and frankly, lots of groups were saying very publicly of ours, after the initial announcement, now's the time to consolidate. If you have these loans that wouldn't otherwise qualify, consolidate, get them in so that you'll qualify, especially by the end of the year when repayment is going to resume. Get your forgiveness now so that that's a much smoother process when you turn to repayment.

So it did strike me that I was surprised it snuck up on the department. I get why they did it, but why it wasn't part of the original plan. That's maybe an oversight, certainly understandable, given the complexity of what they're doing and all the strings it takes to coordinate something like this across the government. But I think there's a lot of frustration actually among people who have been looking at this that it happened this way.

Karen McCarthy:

Yeah, I was going to add that, I mean, one of the very first questions when they announced this debt cancellation was, what about the FFEL borrowers and the non-ED held loans? And so that was a question, and off the bat they said they'll be eligible if they consolidate. And I mean, that was very clear. Their answer was not wishy washy at the beginning. So I had a similar reaction to Jon. Why were they surprised, or why was this backtracking necessary? I guess it should have been on the table initially.

Justin Draeger:

Yeah, I agree, Karen. And it wasn't just that they can consolidate. That was, yeah, they were very emphatic about that. But it was sort of like, then you combine that with the other piece of guidance

they were giving, which is, well, this window's going to be open for a year and the application won't be available till October. So I think there were, I don't know. I guess in retrospect what I'm saying is that I think a lot of people would be forgiven for thinking, Oh, there's no rush. I have a year. Repayment doesn't start until January. The application's not even open till October. I'm busy. I've got things going on, whatever. And then there goes the carpet on September 29th. Now, as I recall, the department said they're still working on this, right? They're trying to find a pathway for forgiveness for the FFEL borrowers.

Jonathan Fansmith:

Yeah, I think they said they'd revisit this or they're looking at options in this area. The question you have to ask, of course, is if you're doing this to cut off lawsuits, where is your wiggle room from that regard? How do you insulate those loan holders from harm if you're having their loans forgiven by federal programs? So God bless the lawyers and staffers at the Department of ED if they figure out how to thread that needle.

Justin Draeger:

Well, so the other piece of this of course is... And I have not been told this by the department, I should clarify, but if I'm doing the calculus from the department side, I imagine it was pretty painful to do a reversal on... I mean, clearly, they knew it was a reversal. Clearly, they knew there'd be blow back. And clearly, their intent going in was the broadest amount of forgiveness possible for people that met those upfront eligibility criteria. But if I'm doing the calculus, my guess is that they don't want to stop. So they are preemptively doing things knowing that it's carving off, it's shaving off eligibility for borrowers in hopes that they still have a critical mass of borrowers that they can plow forward on because at any moment, a judge could come in and slap down an injunction that stops the entire process and it's awfully hard to reverse what's already been done. So I mean, I think they are pedal to the metal trying to move forward on a critical mass of people, because at some point there very well could be an injunction and...

Jonathan Fansmith:

Yeah. I think time really is working against them here for a few reasons. Like you said, the more people we have in a program, if their loans have been forgiven, the harder it will be for a judge to come in and say, "All right, let's unpack that and re-institute their loans." There's the timing issue around resumption of repayment. If the loans are forgiven before then it impacts what you pay or who's even paying.

The third thing is there might very well be a change in control of Congress and House Republicans in particular have been really pretty vocal about, they do not like this program, they do not like the cost of it, they do not like the way it's been implemented. If you are trying to make sure that this is... A pretty signature accomplishment of the Biden... Hasn't started yet, but could be a signature accomplishment. If you want to make sure that holds out, you don't want to let it hang out there and hang out there, it makes you more vulnerable to lawsuits. It makes you more vulnerable to political interference. It makes you... More complications of borrowers and repayment. So they want to move quick.

Karen McCarthy:

Yeah, and I wonder, they've been talking about the fact that if you... Once the application is available, if you apply, they said mid-November, if you apply by then your application will be processed before the repayment pause ends in January. But I feel like this timing thing should also be a fire for people to get their applications in and get them processed before anything might end up changing. So I do wonder

about the onslaught, once the application is... I mean, technically they have said, "Yes, it will be available all the way through next year." But who knows what will end up changing. And if you're not already in the pipeline. I mean, we just thought with the FFEL consolidation. I mean, if I were a borrower, that would scare me a little bit. Soon as this thing is open, I am applying so that I get my cancellation. We'll see.

Justin Draeger:

Well, I agree with you Karen. And I guess my question on a confidence level between the two of you, okay, so that mid-November. First, we were going to have the application early October, now it's October. Okay, let's take that at face value. People get them submitted in the first two weeks of November. What's your confidence level that those will be processed and people will receive forgiveness by January one? On a scale of one to 10, what's your confidence level?

Karen McCarthy:

I don't know. They put that out there...

Justin Draeger:

Oh, I know it's out there. Yeah, I got that part.

Karen McCarthy:

They don't usually do that though. Yeah, I was kind of surprised at the public commitment.

Justin Draeger:

Well, that's dodging the question. What's your number? I want you...

Karen McCarthy:

I'm buying myself some more time here.

Justin Draeger:

Jon, go ahead. Oh, go ahead, Karen. Were you going to say something?

Karen McCarthy:

Wait, so 10 is super confident.

Justin Draeger:

Yes. It's happening. Yeah.

Karen McCarthy:

Oh, I need more time. Jon can go first.

Justin Draeger:

Karen does not like to be boxed into her corner. Jon...

Jonathan Fansmith:

And she's actually really good about finding her way out of it too.

Justin Draeger:

You play fast and loose, Jon. Just give me a number.

Jonathan Fansmith:

I'm going six and a half.

Justin Draeger:

Okay. Six and a half.

Karen McCarthy:

I was going to say seven-ish.

Justin Draeger:

Okay.

Jonathan Fansmith:

I think it's a signature thing. So they're going to put all the resources they have, but they have a lot going on right now. I mean, repayment resumption, end of PSLF waiver, changes to the FAFSA, add 25 million plus possible borrowers filing for forgiveness. I mean, that's a lot.

Justin Draeger:

So neither of you were overwhelming though. And I want to twist this conversation just a moment because you mentioned two words there, Jon, that has everybody in our community really closely paying attention and that's FAFSA changes. And so if I were to ask the same question, Karen, this time without a 30 second pause, the same question...

Karen McCarthy:

I'm ready. What's the question?

Justin Draeger:

The question is on using the same scale, given all that they're doing on loan forgiveness... I mean, my impression is that everybody at FSA and policy is working on debt forgiveness. PSLF, waiver stuff, debt forgiveness, repayment start. What's your confidence level that the FAFSA timeline holds with all of this? Understanding, the FAFSA just came out this last week and we are still waiting for the Department of ED to give us guidance on things like cost of attendance for 23-24, professional judgment for 23,-24. What's your confidence level right now that there's bandwidth or money to do the FAFSA stuff?

Karen McCarthy:

Two.

Justin Draeger:

Okay. So that was...

Jonathan Fansmith:

She was right out of the gate on that one.

Justin Draeger:

Well I think there's like... And Jon you mentioned midterms or somebody did. Karen, you might have mentioned it. When Republicans come in and start appropriating, which we'll talk... Maybe we'll talk about in a second, FSA comes back and they say, "We need more money because we've got so much going on, we need more money to hire up and get these things rolling." I just wonder what the Republican willingness will be to give more money to FSA when they're pretty damn sure FSA is going to spend 90 cents of every dollar on debt forgiveness.

Jonathan Fansmith:

Well...

Justin Draeger:

Or implementing debt forgiveness.

Jonathan Fansmith:

No. And you are in luck because we have a really great test example of that theory, which is that the administration asked for more money for loan servicing and administration in the continuing resolution that they passed last week.

Justin Draeger:

And did they get it?

Jonathan Fansmith:

Those few things were thrown, they got none of it. They didn't get a dollar for it. And I think that's one of those things, you talk about appropriations, they have to be bipartisan. And Republicans at least, especially at this time when all of this is new, are not going to yield a whole lot on the idea of giving the administration more money to do signature accomplishments that they don't like.

Justin Draeger:

The only piece of legislation that really has to pass every year is funding the government. And as you pointed out, Jon, because of filibuster rules, even when you have one party in control of the house in the Senate, there still has to be bipartisan cooperation. And I don't know. Yeah, I guess my point is, there's something to this. If one agency is going just warp speed on something that the other party absolutely hates, the strategy is to starve it. We will give you no... And you remember during Gainful Employment Part One, there was a provision that kept getting inserted into appropriations bills. That was the Department of Education cannot set that a single dollar appropriated to it to implement Gainful Employment. So this is not a new strategy, but I certainly expect to see it pop up.

Jonathan Fansmith:

Oh yeah. And I think the other thing that's really interesting here is we talk about this a lot... Like Gainful Employment. Gainful Employment is an issue that we care an awful lot about and the committees of jurisdiction care an awful lot about but if you went and talked to probably the majority of members,

they wouldn't even know what Gainful Employment was. So the appropriators sort of took the lead influence.

Loan forgiveness is something every member knows about. This is a big deal and it's big in a way that transcends sort of education policy. So it's not just that you might have the ranking members saying, "Over my dead body on this." You will have members going to leadership and saying, "I can't go back to my district and say I didn't fight this tooth and nail." So it's a lot more obstacles around trying to get support for FSA in particular, but funding general in this regard.

Justin Draeger:

All right. So we are concerned, Karen, to put it lightly, because you said two out of 10 we are concerned about FAFSA implementation and timeline. Can you talk briefly, there are two things in particular we're sort of waiting on guidance for right now for 23-24 for the FAFSA that just came out. Cost of attendance and PJ, can you summarize for us what are we waiting for from the department here?

Karen McCarthy:

Yeah, so there are some changes in the cost of attendance in the FAFSA Simplification Act that ED has the authority to implement for 23-24. They have indicated that they do plan to do that, but the issue is that if they plan to do it, they need to, A, officially announce it in the federal register and B, release some guidance related to some of the implementation questions, some of the details that aren't generally included in the law itself. And they really need to do that last month because schools are starting to build their cost of attendance and get their approvals. It's sometimes an institution level effort. So it takes a long time to get all those approvals in place. And until they have a final cost of attendance, they can't really put out any financial aid offers for 23-24. And ED has been pushing schools. We have the FAFSA available. ED has been pushing schools to do this packaging earlier in the process and get these things out the door. And they can't do that until they get some of this guidance specifically on COA.

Justin Draeger:

Yeah. This is where schools start to feel like they're at a 1930s film being gas lit because it's all the FAFSA is out and it's sort of FAFSA is out. Let's do this. Schools, let students know how much they qualify for. Well, let's go to basics. You need two things to tell students how much they qualify for. You need an EFC and you need a cost of attendance. Yet we have seven outstanding questions about cost of attendance guidance that's supposedly forthcoming. That won't impact all... Well, it could impact a lot of students actually, because one of those cost of attendance questions is the three meals a day provision, right? For students who are living at home with mom and dad. How does that work exactly? Or licenseresure questions that can now be built around cost of attendance. And then the second piece with PJ has to do, there're some intersections there with homeless youth and this policy that schools must... They can't have a policy not doing PJ any longer in 23-24. Is that right?

Karen McCarthy:

Right. And there's the provisional independent status. So they need to know... I believe so.

Justin Draeger:

I mean it was slated for 23-24. But is it?

Karen McCarthy:

Yeah, we don't know.

Justin Draeger:

Okay.

Karen McCarthy:

Yeah. And so schools need to set up their policies of how this is all going to work and... Don't know.

Justin Draeger:

So what we need are intrepid reporters out there pointing out that the department's job isn't done. They can't wash their hands and walk away because the FAFSA is working. Well, working most of the time. If you follow hashtag FAFSA on Twitter, it's mostly working, but yet schools don't have the information they need to build their cost of attendance.

Karen McCarthy:

Yes, I mean, students, they know they filled out a FAFSA, so they're going to go to their school and say, "Where's my aid package?"

Justin Draeger:

Right. As they should.

Karen McCarthy:

Right. And the schools can't really give it to them, not because of anything the school has done, but because the department hasn't done everything they're supposed to do.

Justin Draeger:

Well, all right, we're staying on top of that. We are actually talking to some reporters about this issue and of course, talking to the department, but with so much tied up on loan forgiveness, it is really difficult right now to get the department to refocus its attention on almost anything else, for all the reasons we just talked about. Jon, Karen, it's really good to catch up with you guys on Off The Cuff. Welcome and glad you were here. Thank you very much. Let's bring in our senior reporter and our podcast producer this week, Hugh Ferguson. Hugh, what else is going on out in the news?

Hugh Ferguson:

Yeah, thanks Justin. So as you guys mentioned in the rollout to the administration's debt cancellation plan, there is some friction at the state level where some residents could be subject to a state income tax if legislators do not adjust their taxability requirements. Maria actually has an article in the show notes that details how state residents could be impacted by this at the state level. And some of it will hinge on how the department carries out cancellation. And states have even said, they're looking at how ED implements this relief before making any changes on their end to ensure that they don't create an unintended obstacle for borrowers. So while things are still being influenced by these lawsuits, there's a bit of a waiting period that has to happen.

Justin Draeger:

All right, what else is going on?

Hugh Ferguson:

And then another little piece of news this week is that this week we got to see the latest cohort default rates, which have plummeted since last year's reporting. In fiscal year 2019, CDRs fell to 2.3% down from 7.3% from the previous fiscal year. It's worth noting that borrowers with federal loans were not making payments for more than a year of the three year reporting window since the forbearance period was in place due to the pandemic. And we have an article that goes through how the metric has been impacted by the payment pause and shows how it's going to take years to more accurately reflect student outcomes because of the lag created by the pause. And listeners can check out that article as well in the show notes.

Justin Draeger:

That's great. When I saw the 2.3%, Hugh, I was shocked, but I wasn't sure why I was shocked. Am I shocked that 2.3% of people still defaulted or was I shocked that just how far it had fallen? But still more to dig into there. So thanks very much.

All right, thanks very much, Hugh. And thank you to all of you out there, all the listeners. We are back and we'll be publishing these more regularly as we head into fall and winter.

One thing I did want to highlight for folks we at NASFAA HQ are about to hit the road. We're going to be visiting lots of states and regions and some of the places I'll be at, we're going to be doing some short interviews with folks on the road to try to get some of your voices on Off The Cuff. So be on the lookout and look for more details if you're attending a conference that I'll be attending in the next few months. Good to see you all. Thanks everybody, and we'll talk to you again very soon.