

NASFAA Off The Cuff – Episode 57 Transcript

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

Allie: I'm Allie Bidwell, one of our *Today's News* reporters.

Stephen: I'm Stephen Payne with NASFAA's policy team.

Megan: Megan Coval with NASFAA's policy team.

Karen: I'm Karen McCarthy with NASFAA's policy team.

Justin: So what I love about this setup is Karen and I are sharing a microphone like rock stars.

Justin: But I notice, Karen, you're not coming as close to the microphone as may be needed. So Karen, we're glad to have you. You were here helping with another edition, a special one we're doing on the PROSPER Act, but you are doing borrower defenses, which we really wanted to keep you around for. Allie and Karen, you guys have been there.

Allie: Yeah.

Justin: Give me the rundown. How's it going?

Allie: It was a very slow start. The first two days they mostly focused on the first issue paper, which just the standard, setting the standard for a borrower defense claim.

Justin: Okay. So, real quick, before we get into the issues, this is like the real deal because this is the first time they're responding to regulatory texts.

Allie: Yeah.

Justin: This could be law basically.

Karen: Well, regulation.

Allie: Yeah.

Justin: Which carries the force of law, does it not?

Karen: Right, right, right.

Justin: So this is the real deal. We're no longer just talking.

Karen: Theoretically. Right, right.

Justin: Yes. This is what could be in regulation. Give me the room setup. Where is the audience? Because they're in a circle, right, or a semicircle?

Allie: Right. Yeah, they're in a circle. I have a spot that I like to go to in the back of the room, close to the door, close to an outlet.

Justin: Yes.

Allie: So I can have my laptop plugged in, and I can escape quickly before everyone else when they let us go for lunch.

Justin: And Karen, you're probably right behind our negotiators? Or close to our negotiators.

Karen: Well, actually, this time, there wasn't much room. Our negotiators were on the far side, so behind our negotiators were the Department of Education.

Justin: What?

Karen: So I...

Allie: Yeah. They have...

Justin: I thought they sat behind the facilitators, usually.

Karen: No. Yeah. This room is.

Megan: Crammed.

Karen: The circle is turned a different way.

Justin: How do you get information to ... do you guys have hand signals? Or what are we doing?

Karen: We check in at breaks.

Justin: Check in at breaks.

Karen: Yeah, what's going on, yeah.

Justin: And that's working?

Karen: It has been so far. Yeah.

Justin: I mean technically it isn't that great. You could get up and walk around.

Karen: Yeah. You can get up and move around. I have emailed with them there. They're on their email, so we can communicate.

Justin: Yes. I've seen you on Slack trying to get intel at different times.

Karen: Yeah. When stuff comes up and I need to look something up and need it fast. You know, I've been sitting back with Allie this time, which is actually helpful because Allie does the bulk of the work writing up our *Today's News* articles.

Justin: Right.

Karen: So she will sometimes ask me questions as she's working on her article during the day that we're able to resolve then, rather than late at night.

Justin: And Allie, how do you enjoy sitting near Karen?

Allie: Oh, it's great. Because I can just lean over and be like, tell me about all these things that I don't understand.

Justin: This sounds very exciting.

Allie: And Joelle's there today.

Justin: Right.

Allie: On the last day, Thursday.

Justin: So she just jumped in on the last day.

Allie: Yeah. She came yesterday and sort of observed, and that was kind of the first time she had sat through a whole day of neg reg.

Justin: And this is not unusual, that in neg reg you spend the first third of the total time...

Allie: On two topics.

Justin: Right. On two topics. It's like a slow-moving grinding machine. And then, you have to speed through the rest of it because you blew so much time up front.

Allie: Well, they usually stack it in a way where the most controversial ones are at the beginning, anyway.

Justin: Right.

Allie: So those would take the most time.

Justin: So what was the most controversial issue that they discussed?

Allie: So many things.

Justin: Well, one had to do with intent, right? So we talked about this last week. Which was basically who has to prove that the wrongdoing, that if a school is misleading students, where is the burden of proof?

Allie: Yeah. And so during the first session, they had talked about this a while, if they were going to use the standard of preponderance of evidence — so more likely than not this happened — and now they've bumped that up to clear and convincing. And they spent a lot of time talking about how was ED going to interpret those definitions? Was it going to be the same definition as what they would use in a normal lawsuit? Or do they have their own interpretations of what is clear and convincing.

Karen: So I think that, and one of the requests the negotiators made, was that the Department come back at some point, which I imagine will probably be the third session, with examples laid out of, in the borrower defense context, what does clear and convincing evidence look like versus preponderance?

Allie: Yeah. It's own definition for what they, their expectations.

Karen: Yeah. So as Allie said, they have eight separate issues that they have to get through. They spent the bulk of the time on the first two, so I think most of the controversial issues were kind of front-loaded. So they spent the bulk of the time on the first two. I mean, I was just in touch with Joelle, and she said they flew through the last two issues, and now they're circling back to the first one to get back to some of their unresolved issues. Yeah, just some things take a lot longer to get through than others.

Allie: And a lot of these things are things that they talked about in 2016, when they were going through them, like the level of evidence was something that came up, partial relief they're talking about it again this time around.

Justin: Right. And we talked about it last time. This is very complicated, the partial relief. And some people are still, it sounds like, based on what I'm reading that you're putting together, Allie, is that there are still proponents people saying it should be all or nothing, just so you can have some clear cut...

Allie: Yeah.

Justin: And for efficiency's sake, like moving people through.

Allie: Yeah. And that's something that they've been talking about, is how exactly would you determine whether it was partial or full and how much, if it was partial, and they don't have that laid out right now.

Karen: Yeah. That's not in the rules.

Allie: In the language, yeah. How they would calculate it exactly. So that's something the Department is supposed to come back with.

Karen: Yeah. There was a proposal by, I believe, one of the consumer advocates, to get rid of the partial relief, so you do all or nothing. And the Department clearly indicated through their system that they have, that they were not open to that.

Allie: Yeah.

Karen: That partial relief.

Allie: They want the presumption that there will be partial relief in some cases, with the option of full relief.

Karen: Yeah. If the Department is unwilling to do all or nothing, then that kind of ends the conversation because you're not to get anywhere with that. The Department will refuse to compromise on that.

Allie: And one interesting thing that they did bring up, too, when they were saying, we want at least the underlying tone to have the indication that there will be partial relief in some cases, was this recently announced tiered system that they did for some Corinthian borrowers. That's not necessarily what they're thinking of for this. Because they had information for Corinthian borrowers that they might not

get in other circumstances, so that is just it's own thing, and they may not be bringing that into the new regulations. It's a lot.

Justin: I have not sat through wall to wall neg reg in some time.

Karen: And it's four days, which is longer.

Allie: Longer. Normally, it's three.

Karen: Yeah.

Justin: The last time I actually was a negotiator, it was three full days, and that was long. So how are the negotiators holding up? How are the chairs? Because they used to do these on K Street, right?

Allie: They're extremely uncomfortable.

Justin: Can you bring your own chair? Could you bring like a camping chair?

Allie: I thought about bringing a pillow on Wednesday.

Justin: I have a pillow in my office. Would you like it?

Allie: I mean I'm not, it's not an issue now because it's over. But yeah. There are these plastic backs where the back curves in a weird way, where it's going into your spine.

Justin: Do you think that's a negotiating tactic? What are the negotiators sitting in?

Karen: They have the same chairs.

Justin: What about the department?

Allie: Same chairs.

Justin: All right.

Karen: The department people have more space, and they have tables, so they can set up a laptop and spread their papers out and all that.

Justin: The negotiators don't have tables?

Allie: So do the negotiators.

Karen: No. The ED staff is on the other side, so on the other side, you can see them all spread out, two to a table, and over on the public side, we're all trying to type into laptops that are in your lap while looking at papers and shuffling things around.

Justin: Is it crowded?

Allie: Yes. There were maybe one or two empty seats every day.

Justin: That's interesting.

Karen: They do have an overflow room.

Allie: Yeah.

Justin: Where you just hear disembodied voices or?

Allie: No. They have a screen.

Justin: They do?

Allie: Yeah.

Karen: Yeah. Video and audio. And they have four chairs in. I mean they have more than four chairs, but they have four nicer chairs over in the overflow.

Allie: Oh. I didn't even bother to go in there.

Karen: With tall backs...

Justin: Do you remember the days when they used to have refreshments at these negotiated rulemakings?

Allie: What?

Karen: Oh yeah.

Justin: There was a day where you could...

Karen: They had coffee and bagels out in the morning.

Justin: And then it got pared back to just drinks.

Karen: Yeah.

Justin: And then it was just — I think they still were bringing in water. Is there water?

Karen: No. There's a water fountain.

Justin: It's just so terrible. Oh, that's sad.

Karen: And because we're in a federal building, if you leave to go purchase anything, then you've gone outside the secure area, so you have to come back through security.

Allie: Which ridiculous, because there's a cafe attached to the Department's building, and even if you go in there and come straight back, you still have to go through the metal detectors.

Justin: Is this at FSA? Is that where they're doing it?

Karen: Yes.

Allie: And it's, like, full laptops — you know how they're all different.

Justin: I know.

Karen: And it's different depending on the person you get. Because yesterday morning, I could walk through and leave my coat on, but then when I came back after lunch, oh, no, ma'am, you have to take your coat off.

Allie: Yeah. Some people make you take your laptop out of your bag. Some people don't.

Karen: Yeah.

Justin: This is like TSA.

Karen: Yeah. Although the guy did recognize me. Because when I came back from lunch, and I beeped, he said, oh, it's your shoes. Go ahead.

Allie: Yeah. They do remember when your shoes set it off.

Karen: Yeah.

Justin: Well, that sounds like a breach in security protocol there.

Karen: It does seem a little ... not effective.

Justin: Well.

Karen: The whole thing.

Justin: Negotiated rulemaking can be exhilarating and simultaneously soul-crushing, so hats off to you and all the negotiators who have been over there working it. And the next negotiated rulemaking that we'll be doing is gainful employment. That's the first week in February.

Allie: Yeah. Next month, they're actually back to back.

Justin: Yeah.

Allie: One week is gainful, and one week is borrower defense.

Justin: Anything else on borrower defense?

Allie: So I guess I would just say, again, that when they come back for the third session, the draft language that they have is obviously going to, presumably look totally different, so the degree to which this session matters is kind of questionable to me.

Justin: All right. It matters in that it moves the conversation.

Allie: Right. But you're kind of hitting the reset button, and then you have to go back and re-debate all these things and see what they took into consideration, what they didn't.

Justin: Are they doing tentative agreements?

Allie: Yeah.

Karen: I was going to talk about that. What they do, they have...

Allie: Temperature checks.

Karen: Yeah. What they call temperature checks. So they have facilitators that I haven't had experience with, with negotiating rulemaking. And these new facilitators have this system they call temperature check, which is like, thumbs up, thumbs down, or thumbs to the side. So when people make a proposed change to the language that they have in front of them, they talk about it. People ask clarifying questions. All of that. And then they get to, you know, when it feels like all of that has been aired, then

the facilitator will say, okay, we need to do a temperature check on this proposal. And by their thumbs up, thumbs down, thumbs to the side, it's like, are you interested in furthering the conversation on this? Sometimes we don't have wording. There's a proposal floated, but we don't see the actual words, which obviously matter.

Justin: What? Wait a minute, wait a minute.

Allie: Like should the Department take this back and...

Karen: And consider it.

Justin: So thumbs to the side means, I want to have a conversation.

Allie: You're like indifferent.

Karen: I'm willing to keep talking about it.

Justin: But I'm not to an agreement.

Karen: Right. But even if you're a thumbs — and they did say don't go throwing around your thumbs up. Thumbs up does not bind you to anything. It's just, you know, I like this idea.

Allie: And you'd like to see more detail, yeah.

Justin: So do they have tentative agreement on any issue right now?

Allie: Yeah. So one of the things that they talked about on Wednesday was related to pre-dispute arbitration agreements and whether additional disclosures and counseling should be required, and they came to a tentative agreement that it should only be for schools that are using these because, a while ago, the Department said they don't have the authority to prohibit schools from using these.

Justin: So in the past, if there's no consensus on the total package, the Department can regulate how it sees fit.

Allie: Right.

Justin: But often in the past they've tried to stick with the language where there were tentative agreements, even though they aren't bound to it.

Karen: Yes.

Justin: So you would expect the same thing. If it's noncontroversial, everybody has it. They have a tentative agreement. Hopefully that would be like the final.

Karen: Yeah. But there have been in the past, too, and they stressed this as a way to incentivize the group to come to consensus.

Justin: Right.

Karen: Is that the Department doesn't have to do that and that sometimes the Department says that they themselves, although the incentives that are there might not lead you to think so, that they are motivated also to come to consensus. So there have been times in the past where the Department has conceded things in efforts to get to consensus, and then if the consensus falls apart, then the Department might end up going back on things that they gave up on. Because we were really doing that in an effort to get us to consensus, and if we don't have it, we're going to go back to what we originally wanted. But sometimes, the Department does know that what the group agreed to is better than what they originally came to the table with, so they will go with that.

Justin: The major, to me, when you're talking about borrower defense and even gainful employment, the major incentive to reach consensus is that things that are negotiated and agreed upon in negotiated rulemaking have less of a chance to be overturned than in a suit or a court of law. Because you've reached consensus. That's one of the reasons that Congress directs agencies to do negotiated rule making. These are such contentious issues. It's hard to see a scenario where somebody's not suing the Department if you don't end in consensus and the Department goes a certain way. So we saw it with the Obama administration, lawsuit after lawsuit on gainful employment. And with this one you could see it again, just potentially from the other side, so instead of schools suing the Department, you might have attorneys general or consumer groups suing the Department. So I think that, to me, for these contentious issues, is like the major motivating factor for the Department. Do we want to end up in legal battles? Now, we just did something on the PROSPER Act. We should also point out that was borrower defense, but on gainful. This would all be moot anyway, because Virginia Foxx's bill would eliminate gainful employment and prohibit any future regulating on gainful employment going forward.

Karen: But in the PROSPER Act, they did address borrower defense by putting into the statute, because right now there's not very much on borrower defense in the statute, which is why we're doing all of this. So basically the whole thing is regulation now, so the PROSPER Act did specify certain ways that borrower defense would have to work if the PROSPER Act were to become law. So it wouldn't get rid of

borrower defense, but it would specify in the statute, so we would not be regulating that. We would not be negotiating that later. Because it's in the statute. That's the way it's going to be.

Justin: Does it prohibit regulation on borrower defense?

Karen: No.

Justin: So you're saying you don't think there would be some regulation coming from that?

Karen: No. I think there would be but not obviously for the topics that they do specify.

Justin: Right, right, right. But the point is that.

Allie: It would put parameters around it.

Karen: Right.

Justin: If it's changed in the HEA, we will be back negotiating borrowing defense.

Megan: At this table.

Justin: Again.

Megan: Yep.

Justin: For the third time. Okay.

Allie: In as many years.

Karen: The whole thing is a little deja vu. There have been a couple of times where Allie and I have looked at each other like...

Allie: It's like this is the exact same, and it's not even just the same topic. It's the exact same arguments.

Karen: Like the same parties are making the same arguments that they made the last time.

Justin: Yeah. It sounds like a marriage that's going south. Okay. Thank you very much. Let's move on.

Karen, thanks for joining us.

Karen: Sure.

Justin: You're welcome to stay, but I know that you wanted to get back for the concluding round of

borrower defense.

Allie: More soul-crushing discussion.

Justin: If you want to take a chair from our conference room, I will lend it to you.

Karen: Oh. Thanks so much.

Justin: I would love to see if you wheeled in a different chair.

Megan: People would tweet about that. There's a lot of things to discuss about what's happening in the audience in borrower defense. Best thing that happened all week. Karen McCarthy rolled in a recliner.

Justin: In protest of the plastic chairs. All right. Moving on. Since we've gotten back, okay, I've changed up my entire morning routine, so I don't know if you guys have done this, either, but one of the things, so to get into the office earlier, I tried slugging at the end of last year, and I've continued to do it this year. And I think this is a unique DC thing.

Allie: What is slugging?

Justin: Do you not do slugging? Or do you not know what it is?

Allie: I don't know what it is, so I might do it. I don't know.

Justin: Oh. So a slug line is these just lines that form at various points within the city and out of the city where people can catch a ride from a stranger, and they can use HOV together.

Allie: Ohhh.

Justin: So you stand at Vienna Metro. You could stand at a slug line. People will pull up, and they'll say, I'm going to Farragut, or, I'm going to Foggy Bottom, or, I'm going to Georgetown. And if anybody's going to that place, they just jump in that car, and then they go. And you can ride HOV all the way in, which cuts down on your commute significantly.

Allie: Yeah. Do you give anything to the person who gives you a ride?

Justin: No. You don't give anything. It's not like an Uber.

Allie: So this is just out of the goodness of their hearts.

Megan: Well, they want to get there faster.

Justin: They win because they don't have to pay a toll because they're doing HOV. You win because you don't have to ride Metro. And you don't have to pay, either.

Allie: And they would be driving either way, so it's not like they're wasting gas.

Justin: They're driving either way.

Allie: Yeah.

Justin: Yeah, yeah. So I've been slugging, which is a new experience, but it's been working.

Megan: So at the Metro is where you pick it up.

Justin: I just pick it up at the Metro, yeah.

Stephen: So how do the ones in downtown work? Do they go different places or..?

Justin: So when you get a longstanding, established slug line, there are stops, almost like there are bus stops, and everybody knows what they are. And there are pick-ups that correspond to those spots, but at Vienna, it's not established yet because it's so new. They only did it because these tolls that they put into place, so the toll to go eight miles.

Allie: On the 66.

Justin: Yeah, on 66, was \$40.

Allie: Yeah.

Justin: In December.

Allie: And it changes depending on how many people are.

Justin: It's dynamic pricing, so the more people that on there, they're trying to keep the speed at 55 miles per hour, so the more people that get on, the higher the tolls go. I think it topped out at just around \$44 or \$42. I'm all for it. I love it. I am all for the tolls and the dynamic tolls because the goal is to move people.

Allie: Yes.

Justin: So you can move way more people. I prefer that than sitting in traffic, so I'm all for the tolls.

Allie: I have questions about the slugging.

Megan: Me too.

Allie: Is there an app? Is it word of mouth?

Justin: Right now, it's being organized through Facebook.

Allie: Oh.

Justin: So in Springfield Metro in Springfield, Virginia, this is all established. It's been around forever. There's no app because people just know what it is. And they know where to pick up and drop off. But right now, at Vienna, because it's a new line, it's all through Facebook. But there's a whole website about it, slug-lines.com.

Allie: Cool.

Stephen: Slug Line. That was the blog or whatever in House of Cards.

Allie: Oh, yeah. Oh, I forgot about that. Well, and also because, in news, when you use different systems to submit your stories and stuff, depending on where you're working, but when you name your story, the file is called a slug line.

Justin: Yeah. So anyway, I've been doing the slugging thing. It's working out great. I'm getting in in record time. I've been able to get into the office early. I don't know. It's a nice thing to do in the new year, you know? To change something drastically. And maybe it causes some disruption and some new creativity. So, new routines, new legislative agenda. We've got a budget that needs to be passed. Before we get into the budget, one thing I want to talk about. So the Republicans and Democrats, if people don't know, they have these annual retreats. The Republicans just, was theirs at Camp David? Where did they do their retreat this year? They just had it.

Allie: It must have been at Camp David because they...

Megan: It was at Camp David.

Allie: They celebrated Betsy DeVos's birthday.

Justin: She came in for it.

Stephen: It wasn't the full gamut, like they do at the beginning of the session.

Megan: With a new Congress.

Stephen: It was just.

Justin: Leadership.

Stephen: The top leadership and some cabinet members were at Camp David.

Justin: Okay. So they came in. This is what's so jarring about this. Because some lawmakers are always in suits. Did you guys see the pictures coming out of Camp David? Of the jeans with the blazers and...

Stephen: So, yeah. I saw that clip. That was on TV.

Justin: You're talking about Mitch McConnell?

Stephen: Yes.

Justin: That was bizarre, right?

Stephen: So he wore that same exact outfit at the end of last year's thing, and I remember thinking...

Megan: Like casual Friday.

Stephen: He was out a restaurant or bar or something, and the news was on, and you see him. You like point to him, and I said to a friend, I was like, you can tell he doesn't dress down very often because he's literally wearing, like, a blazer and a sweater and a button-up with jeans that look like he tried to...

Justin: Yeah. And the jeans.

Allie: Like the top is still business.

Stephen: And no offense to Senator McConnell...

Justin: It didn't seem like. Yeah. The jeans were not, they were not slim fit, they were not...

Allie: Were they dad jeans?

Justin: They were a little off color, maybe that you would have seen in the past? I'm guessing these jeans

may have been, he might have had these in his wardrobe for a while. But the other thing is Donald Trump was in full suit. So he didn't dress down. And then you look at Paul Ryan, and Paul Ryan had on dress pants, no tie. That was as far as Paul Ryan went in dressing down. So it — the blue jeans really stuck out like a sore thumb. Anyway. Bottom line, they were all there. Betsy DeVos was there. And coming out of this, I've seen, now, two contradictory reports about what 2018 is going to look like, okay? One report says that, coming out of Camp David, the Republican leadership decided that they were going to talk up legislative victories, so talk up tax this year, and downplay any other action. So it would be a quiet year, which would be a traditional midyear election, right? Midyear, you don't do anything controversial. You go into the midyear, and it's sort of like an 18-month election cycle. The other side of the coin is, I've heard, because election cycles never end anymore, because now we're in a modern era with social media, fundraising begins before somebody even takes their seat in Congress, that it never ends and that it could be surprisingly a productive year when you take into account infrastructure. Where there's lineups, infrastructure being one. Maybe a fix for health care. Senators Murray and Alexander are working on this health care fix. And then mentioned in this other article was higher ed specifically. And that, if anybody was going to pull off a bipartisan higher ed bill, it would be Senators Alexander and Murray.

Megan: I do agree with that.

Justin: So I've seen two contradictory things about 2018.

Megan: The latter just seems too erratic.

Justin: Does that change your feeling about whether we'll have an HEA this year? Does that move the needle for you? If you were, last week, 1 being no HEA, 10 being absolutely, and let's say you were at, where were you last week? Let's say you were at a what? Four? Five? I don't know where you were.

Megan: I think it was a yes/no, and I was a no.

Justin: Okay. So does that move the needle to a sideways, as Karen and Allie just talked about? Does that take the thumb from no to a sideways?

Allie: Well, who's analysis was this?

Justin: I don't know. Pick your think tank or news organization.

Allie: That matters.

Justin: Oh, it wasn't a far ... So the one that said no was Axios. Which is pretty credible now. That's the former Politico founding editor. And then, on the other side, I can't remember if it was MSNBC or I don't know, some major, but it was a pundit. Not a pundit. It wasn't like news. It was like somebody who does analysis.

Allie: Yeah.

Justin: Like an in-house editor.

Stephen: I think we have to think about whether, what higher ed action in 2018 might mean. Because there's a chance that we turn HEA into — which we thought this was going to happen a few years ago — a package of bipartisan bills, not a comprehensive look, and then you say, look, we did something. That I've heard. And there's also the fact that, as I mentioned on the PROSPER-specific podcast, where Democrats may not be fully inclined to want to play ball on higher ed. It's an issue that they care a lot about and that they may feel like they may have better cards at the end of the midterm.

Justin: I think you're right, Stephen. And that may be the biggest deciding factor. The numbers did not look good for Democrats. The numbers don't necessarily look good, but with all their, we talked about this last week, with the changes in Virginia and Alabama, if they're going to come in on a wave. They have no incentive.

Megan: The retirements announced this week — Issa.

Justin: Right. Why would you push anything through? You would drag your feet and wait until you could do something in the new Congress.

Megan: Yeah. I just think, big picture, they're going to stick with the touting what they've done strategy versus the let me line up all these odds and ends. It's too loose. It's, like I said before, too erratic. Too many...

Justin: So you don't even see an infrastructure...

Megan: I mean, I think they'll make some progress on it, but I really think, by June, whatever you can do by June. After that, it's...

Justin: Yeah.

Allie: I feel like there's risk, too. Like if you try and do all those things, a lot could go wrong. That you

can't predict.

Megan: Like however many misfires on health care last fall? Yeah.

Stephen: I think that you could jam a lot of Democrats on infrastructure. The issue is that you have so many very conservative members. There is a mess right now that we're going to talk about on the podcast with DACA, with the budget, with funding, with surveillance programs. There are a ton of issues, and the folks on the edges are very angry about both of them. And I think that you could jam a lot of Democrats on infrastructure, particularly all those senators... I talk about this all the time because it's a terrible map for Democrats, for the Senate. You could jam a lot of them into supporting it and get a big win. The question is would Republicans support it who are fiscally conservative?

Justin: All right, let me hit on that for just a second because the other thing that President Trump said which is sort of, people got really excited about, this is seven years now we've gone with no earmarks. No "pork." Nothing to grease the wheels of Congress, which is why I know everybody's sour on earmarks. Earmarks are bad. Pork spending's bad. I've got to tell you, the thing I liked about earmarks was that it was the grease that...

Megan: That moved it.

Justin: Yeah. Things moved for it. And John Boehner, before he left and was pushed out, in 2013, gave an interview where he said, "I have absolutely," and he was dealing with his own caucus, and he said, "I have nothing that I can use to incentivize my members to a, outside of philosophy," and that's when the Republican party started fracturing into your Tea Party and your Defense Hawks and Fiscal Hawks. He just didn't have the earmarks, so they put in the ban in 2011. President Trump comes out this last week and says, maybe we ought to bring back earmarks. And to me, this is sort of like, you could almost hear people being excited. So this was one from *Politico*, says, "President Trump, who campaigned on draining the swamp, endorsed earmarks on national television this week. When Representative Diaz-Balart found out that Trump had said earmarks could, 'get this country really rolling again,' the 15-year House veteran fist-pumped into the air." So, I just, I like the picture of, that really got him going. But I'm thinking, some people are like, it allows legislators to say, look what I've done for you to get re-elected. It gives people ways to grease the wheels to actually move legislation. I'm not for off-the-rail spending, but I am sort of like, it does make things easier. Because you have things to trade. And that's what politics is. It's the art of persuasion and getting people to your side.

Megan: Yep. Bringing things home to your district. Making it local. Yeah.

Justin: And it's not like colleges didn't benefit from earmark spending.

Megan: No. In fact, did you see in *Politico Pro* this morning, they were saying most, that the college and university industry would be very happy about that because they benefit directly.

Justin: Yeah. Because one off grants. There was curriculum development money. Anyway.

Megan: And not all bad. I mean, the thing is, I think there was a highlighted, was it the bridge to nowhere and...?

Justin: Right.

Megan: You know. But they're not all like that. I mean there are some, I think, that were well meaning and....

Justin: You can still rein it in.

Megan: Yeah, exactly.

Justin: They could create a cap. Stephen's shaking his head no. He does not agree.

Megan: Maybe a cap, yeah.

Justin: Having lived through an era where legislation moved and now living through an era where nothing moves, it's just frustrating. That brings us to what's not moving. Funding. So, in a quick minute, Stephen, you want to catch us up? Where are we at with the funding?

Stephen: It's even more of a mess than it was last week.

Megan: If that's even possible.

Stephen: I think there are so many issues that have to be resolved that are still being worked out, and you have DACA in here. We'll talk about that in a minute in more detail. You have DACA, where you have members saying, we won't support any sort of continuing resolution or budget agreement or funding bill for the year without DACA. There are surveillance programs that need to be reauthorized that are controversial. You also have the funding itself, so the budget caps, the CRs. There are a lot of Defense Hawks who really want more money for defense. There are a ton of different issues that are all

collapsing onto this January 19 deadline. It looks like we're going to have another continuing resolution because they aren't going to be able to figure out all of these issues. It's just a matter of what will be in the CR, and there are just so many different items here. You have vote — sort of the calculus changing. So in the Senate, you have McCain and Cochran who are out on medical sort of situations. And you have Doug Jones, so now you have, with those two out, you have a 49-49. Mike Pence is planning a Middle East trip for next week. It gets crazy.

Justin: So if we do a four-week extension. That's the most likely scenario, right? Four weeks to put us into February. Is that right?

Stephen: Well, you need the time. The thing is that what has to happen, and we've talked about this, but it's important, is that you need to have a deal on the budget caps. They need to set the top line numbers, and they still haven't done that, and once you do that, then you need to give the appropriations committee a few weeks to negotiate all of the program-level funding. So by default, you can't just do, like, a week. It's not like they're just deciding on DACA. They have these budget caps and then the funding level, so you need four weeks.

Justin: So if we go into February, that means we have no continuing resolution at the time the Pell schedules will be released.

Megan: Right.

Justin: Which are mandated by February 1.

Stephen: Which then begs the question should they have just come out earlier because nothing has changed?

Megan: Right.

Justin: All right. So more to watch there. Continuing with DACA news, we did have a judgment come out of the Ninth Circuit that basically said the administration could not stop processing DACA applications. Is that right, Allie?

Allie: Yes.

Justin: Basically, the administration originally said they were going to stop processing them because they didn't think it was constitutional to begin with, and the Ninth Circuit said it was constitutional, and if

that's your argument, then you should still continue to process the applications.

Megan: Yep.

Justin: And that has to start back up immediately, right? That was a court order out of the Ninth Circuit. So I don't have any details except to say DACA continues to be a mess, and if the administration was saying, you have to decide by X date, but now they're mandated to continue to process them, it's not clear to me whether that date holds any longer.

Stephen: But it's an executive order, so you could still repeal it.

Justin: That's correct. You could rescind the, but...

Stephen: Because you have the authority.

Justin: The lawsuit was on the suspension of the applications in the interim.

Stephen: So then that brings the question, just, what will happen? The ball is really in Congress's court here, and so I think that's an important issue with the allowing folks to apply and recertify or whatever through the process, but actually, the high-level issues are still a mess as well. And I'm a little negative today. But I think that, if you saw, the other day, President Trump basically held a public negotiation session with congressional leaders, which was pretty staggering. You don't see that very often.

Allie: It was televised, right?

Stephen: Yeah, exactly. Allowed the media to stay in and was televised. And there's a lot of disagreement, and there are a few issues here. Essentially, it's just deciding how much Republicans are willing to give and how much Democrats are willing to give.

Justin: Well, and President Trump sort of laid out, like, oh, we're not that far from a comprehensive immigration reform. We are **way** off from a comprehensive immigration reform. DACA is easy because most voters, Republican and Democratic, support it. This is a no-brainer. In fact, I think Republicans would, it's to their detriment if they don't get DACA. Now they can do it reluctantly, but it's pretty clear that most voters, the more they learn about this, are sort of like yes. This is the compassionate and reasonable thing to do.

Allie: Yeah. So President Trump kind of maybe accidentally...?

Stephen: Senator Feinstein.

Allie: Yeah. Agreed to a clean DACA bill.

Megan: He said this is what I want, but I'll sign what you bring me. That's basically what he said.

Stephen: Yeah. She asked, would you support a clean DACA extension with nothing else in it? No wall. No chain migration, which the wall and chain migration are the two big issues that Republicans want to address. And he said yeah.

Allie: And then someone corrected him and said, this is what that actually means.

Justin: Alright. Senator Warren, this last week, was highlighting the fact that she had sent a letter over to Federal Student Aid asking a lot of questions about their Next Gen...

Allie: Debit card idea.

Justin: Yeah. Which is part of their Next Gen model of student aid and servicing. And she had sent a letter earlier in the year, January 4, asking questions about loan servicing.

Stephen: At more of a high level.

Justin: Right.

Stephen: About all sorts of things with the system and then this other letter.

Justin: And then also questions about how they're processing some of their work, getting data from the Social Security Administration, when there are very tight restrictions and an agreement between the Department of Education and Social Security about how that data is used.

Allie: Yeah. And the data thing was related to the — gathering the earnings data that they were going to use in the tiered release system, so a lot of, yeah, for borrower defense. So a lot of different issues.

Justin: So Senator Warren is not...

Allie: She's been busy lately.

Justin: Has not missed a beat in the new year in reaching out to Federal Student Aid. On the debit card thing in particular, Allie, you want to catch us up?

Allie: Yeah. So it was actually a group of Democratic senators. You had Dick Durbin from Illinois, Jack Reed from Rhode Island, Richard Blumenthal from Connecticut, Sherrod Brown from Ohio. So they sent a letter to Dr. Johnson at FSA just kind of expressing concern, one, that there have been issues with this in the past, where financial institutions might have taken advantage of students and parents with fees and just different practices with the prepaid, with the debit cards that you use in college. And then, two, they made a data request for FSA to send them information by the end of the month, sharing any data that they have that would show a need for the prepaid card program, any data that would show that this would be more beneficial to students than a direct deposit of aid into their regular bank account, things like that.

Justin: Yeah. All good questions, I think. As we talked about before, I do have some personal reservations. On the one hand, I understand. If FSA's trying to do something where you have a no-fee card, I understand that. I do have this concern about the federal government tracking all of your purchases and transactions.

Megan: Yeah. Right. And flagging, you know, yeah, you shouldn't be in here with that money.

Justin: Right. I understand the government can get that with a warrant.

Megan: Right, but that's...

Justin: That means you have to go to a judge and say why you need it. Just having people voluntarily say how they're using that money.

Allie: Right. And it's not something, I assume, where you could go and just, the student could take out cash.

Justin: The other question that they raised was, we already have a debit card at the federal level through the Treasury Department. There's an existing program for some federal means-tested benefits where Treasury has a card. So can we just piggyback on that card? Which I think is a fair question. Alright. We got some feedback last week, Allie, from some folks.

Allie: So, Rhonda said, "In this world of transparency, which is a good thing, do we hinder students with more and more reporting regulations and compliance issues that take away time from the students themselves?"

Justin: I think Rhonda brings up a good point, and whether we're talking about negotiated rulemaking or

we're talking about the PROSPER Act or future laws, this is something we're constantly grappling with, because sunshine is a good thing. I think we'd all agree with that, right? Transparency, sunshine, can't be bad. But at some point it obviously is so overwhelming that nobody is looking at any of it. So I don't know what the answer is, but it does not seem that we will be having a reduction, for all of the talk of simplification, there's no reduction in consumer disclosure and counseling requirements on the horizon.

Megan: In the separate episode on PROSPER that we just did, Stephen made some of those points about, even within that bill, the multiple kind of duplicative efforts in there.

Stephen: Right. But I will say, too, and we encourage this whenever we're on the road or wherever else with member advocacy is that the PROSPER Act and whatever ends up happening in Congress with HEA or otherwise is not inevitable, and that the voices of aid administrators and college and university administrators broadly do matter in the conversation, so speak up on them and encourage your president or your administration or yourself to be active and engaged and help ensure that regulations and policy are designed in a thoughtful way.

Justin: Yep. Got a couple of other comments. Matt sent us a comment. We've got a comment from Diana. These are first-time, it sounds like, listeners, some of them, and just saying that they appreciate the podcast and they think we're doing great, and they appreciate the information, so keep sending us your comments. Let us know how we're doing and how we can help better. Alright. Remember to tell your friends. Send us your comments. Remember to subscribe. Take care.