

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:

Welcome back, Jon, Karen. Glad to have you all here. It's been an exciting couple weeks here in Washington, DC. We just had our fly-in this last month. We had 400 and some members here in Washington, D.C. talking about all sorts of things. One of the things that they were talking about was student loan debt, and yesterday, was it just yesterday or was it two days ago, the week is going by fast, I guess it was two days ago-

Jonathan Fansmith:

Tuesday, two days ago.

Justin Draeger:

... yeah, two days ago, student loan debt had its big day in court. We're going to talk a little bit about something we talked about on the last podcast, which was third-party servicers. And we have a poll in Today's News, today actually, on the FAFSA and how schools are going to be collecting housing information. That seems to be getting a lot of attention. We'll talk a little bit more about that.

But, first, let's talk about the United States Supreme Court, just this last Tuesday, heard heavily anticipated legal arguments. The Biden administration, of course, was laying out its legal justification for the president's student loan debt cancellation program, and the opposing parties, in two cases, that were both heard on Tuesday, questioned whether the president had the authority to carry out the program and then, of course, whether it would cause harm to the borrowers and the other entities.

The two critical issues in the argument centered around the administration's use of executive authority and whether either of the legal challenges brought, one by a group of six states, and then the other was a pair of student loan borrowers, whether they have the legal standing to dispute the program, and of course, the president's authority all rests under the Higher Education Relief Opportunities for Students or the Heroes Act, which was done back in 2003.

And the contention by the president, or the Department of Education, was that ED provides the secretary broad authority to grant relief from the student loan requirements during specific periods of war, other military operation, and this is the key point, or national emergency, and that's what the administration is applying this to related to the COVID-19 pandemic.

Maria, I know you're editing and producing this week's program, but you were actually down at the Supreme Court while all of this was going on. Several lawmakers showed up, and there was protests going on, or at least people down in support of all of this. Give us a sense of what was going on, how many people were down there protesting, what was the mood, how long did all of this go on for?

Maria Carrasco:

Yeah. I went down at 8:00 AM and it was very energetic. There were about 50 or so students mostly who were chanting, and multiple lawmakers showed up like Senator Bernie Sanders, Senator Elizabeth Warren, and other Democratic lawmakers, and, yeah, there was a lot of energy there. It lasted for a few hours, and a lot of the students who were there were wearing hats that said NAACP, and there were a lot of advocacy groups there. Yeah.

Justin Draeger:

We had a task force that was in town. This task force was not about student loan debt. They were focusing, actually, on federal work-study and some of the flexibilities around federal-work study during COVID-19, but they took a break from some of their work and actually went down to see what was happening at the Supreme Court as well. They went down to see their government in action.

One of the questions I grappled with in all of this is is this a political issue, is this a legal issue? My answer to this is yes, it's both, it is, it's a yes, and you got a sense of that at the Supreme Court. Here's what you said, Maria, Bernie Sanders was there, Elizabeth Warren. Here's what Bernie Sanders had to say when he was down at the Supreme Court speaking to the crowd.

Bernie Sanders:

And I say this with no joy in my heart, that the younger generation in America today, despite huge increases in worker productivity, despite the fact that we are the richest country in the history of the world, your generation will have, if we don't change it, a lower standard of living than your parents, and we intend to change that.

Everybody knows that, if this country is going to maintain its economic position in the world, we need the best educated workforce in the entire planet. We need you guys to go out and be the doctors and the nurses and the scientists and the teachers that we desperately need.

Justin Draeger:

Senator Elizabeth Warren also showed up and spoke to the crowd. Here's what she had to say.

Elizabeth Warren:

It's time for the Supreme Court to stop playing politics and just apply the law and let us cancel this debt. Now, in the last few weeks, we've heard from families all across this country who are struggling with debt, and I want to say a very special thank you to people who have their own debt who've shown up, yeah, who've shown up to raise their voices for millions of people across this country that we don't usually hear from. We hear from people now who borrowed money when they were in school five years ago, 15 years ago, 25 years ago, they've made payments and payments and payments, and today, they owe more money than they originally borrowed. That's not right, and that is why we are in this fight.

Justin Draeger:

Dr. Virginia Foxx, chairwoman of the House Education Committee, who was on this podcast two weeks ago, she was on Fox News earlier that day. She said, quote, "The potential of this is to cost the American people \$1 trillion altogether, but that's not the only cost. It means that, in the future, colleges and universities are going to continue to raise the cost of tuition and fees, and those students taking out loans this year, what do you think? They're assuming their loans are going to be paid for in four or five years? This is never-ending cost to the American people."

When I say is this political, it's obviously yes, but I also think it is legal, and all of that was happening outside the Supreme Court. Inside the actual building, the legal arguments were being made. Before we get into all of that, Karen, Jon, any observations? What did you hear? What do you think? Jon, let's start with you, any observations?

Jonathan Fansmith:

You mean outside of the actual arguments themselves?

Justin Draeger:

Anything you got. Where do you want to start, outside or inside?

Jonathan Fansmith:

Well, I'm happy to talk inside. I thought that was actually really interesting, the oral argument's really interesting, but I'll say the outside is exactly what you'd expect, right? You said this, there was a big political dimension to this for both sides, and both sides played to the script. None of this is surprising. I think probably what was interesting was what happened inside, and we'll talk about that in a second. But, Karen, I don't know what you're thinking.

Karen McCarthy:

Yeah. On the political aspect, my first instinct, when I heard about all the arguments about the cost, I was like, "Why are we talking about the cost?" But we wouldn't be talking about the cost unless it were also a political thing. I was like, "The Supreme Court shouldn't be deciding anything based on how much it costs. They're supposed to be looking at the legal aspect of it." But I feel like the discussions about the cost do then bring in all of the political angles to this as well. Yes, I thought that was interesting.

Justin Draeger:

Well, so I can see why you would think that. And I'm not an attorney, I should say that, I don't play one anywhere except in this podcast, so I didn't think that either, Karen, but then, when we got into this, I was reminded by the Chief Justice when, in the first 30 minutes ... Let's put out the politics for just a second because the Chief Justice got into this very early on. The politics of it is, and sometimes we all get drawn into this, including the NASFAA membership, Democrats, good, Republicans, bad, or Democrats, bad, Republicans, good. That's what it boils down to. But, on the Court, obviously all the justices come in with their own lens in which they view the law, but this is how the system is built, right? We have a system with checks and balances. All the Supreme Court justices are nominated and they are confirmed by the Senate through a system that the rules are laid out.

And you may think that those rules are fair depending on if your party is in control of whatever branch of government at a certain time, but those are the rules. And so we have a Supreme Court, and what the Chief Justice laid out in the first 30 minutes, was reminding the litigants that the same judicial review that's being applied in this case, in this instance, regarding the questions doctrine, is the same judicial review that saved the DACA program during the Trump administration, which is, if you believe forgiving student loan debt is good or bad policy, that's a question that's not really the question in the arguments on Tuesday. But, if you believe forgiving student loan debt is fair public policy, if you believe it's impactful, if you believe it's major public policy, and that does get at cost, if you believe it's politically impactful public policy, the answers to those questions do matter because the answer, in part at least, gets at the legal doctrine question.

And I think some of the justices, at least the Chief Justice, was wondering then the domain of that is Congress, and even by Congress not weighing in is Congress weighing in, at least that's the question that Chief Justice was laying out there. I don't know. Jon, what do you think?

Jonathan Fansmith:

Yeah. There were two arguments essentially that are being made during the oral arguments, and they were on two very different issues and their standing, which is pretty important. It was actually, I think, the more interesting aspect of this. But, in terms of the major questions doctrine, again, I hate saying it played out like you expected, but Chief Justice Roberts kept hammering "half a trillion dollars," "tens of millions of students," the scale of the program, the cost of the program. It's really hard not to read that as a direct point back to this major questions precedent that they set last year with West Virginia EPA essentially limiting executive agencies' authorities to implement their regulations or interpretations of what statute requires.

You could look at that part of the oral arguments and say, "Well, this is pretty much a foregone conclusion, the repetition of it, the emphasis on it." I think, for the conservative justices, it was pretty clear. Some issues about fairness and should a painter pay for a college graduate's loans and things like that were raised, but really, this one, I think you put your finger on it, if you get past standing, it seems very clear that the conservative majority is going to strike down this program as being excessive in exceeding Congress's intent and authority that Congress intended to give to the Department of Education. That seems really clear from these arguments. Standing, I think, is where it's gets to be a little bit more interesting.

Karen McCarthy:

Are we going to talk about standing?

Justin Draeger:

Yeah, go ahead, Karen.

Karen McCarthy:

Can we talk about that? Yeah. No. I remember when they first authorized this program, and I have no idea why, have lots of lawyer friends and judge friends, I don't know, and we run together, so we talk about random stuff. And the first thing they were all talking about is, is somebody going to sue? Well, who has standing? And that took up about three miles of conversation during a run. I feel like I have this rudimentary, just enough to be dangerous knowledge of the standing issue, and that seems to be the first thing you talk about before you even get to the arguments is do you have standing or not? If you don't have standing, it doesn't matter really how good your legal argument is. And the whole question of Missouri filing the lawsuit instead of MOHELA filing the lawsuit, I have, yeah, lots of questions there, and I'm almost afraid to ask, but since that seemed to be an issue around the standing question, could MOHELA file a lawsuit now?

Jonathan Fansmith:

I think Kagan said, during the arguments, "If MOHELA was here, we wouldn't be talking about standing, but you're not MOHELA and MOHELA's independent of your state government, so why are you here and not MOHELA?" And we should say MOHELA's been abundantly clear that they did not want to bring a lawsuit and were not participating in the lawsuit and had no role in this.

Karen McCarthy:

What if that changed? What if that changed for some reason, and now MOHELA was willing to do that?

Jonathan Fansmith:

I think, if that happens, and, again, I think that's really unlikely based on everything MOHELA said, but if that were to change, even the more liberal justices, more progressive justices, said MOHELA would have good standing. There is a direct financial impact on them. They would be harmed by the policy. I thought that was actually kind of interesting. We didn't see, in all of the legal challenges, we did not see servicers, who are the ones who would probably have the most direct claim of harm from this program, stepping forward and challenging it. That's the one group ... those same arguments you were having, or not arguments, discussions you were having with your running buddies who are all lawyers ... and what an elite group of runners you travel with, Karen, I like this highly educated running group.

Justin Draeger:

I'm also impressed that you can maintain a conversation going three miles-

Jonathan Fansmith:

Oh, God.

Justin Draeger:

... so there's [inaudible 00:14:06] that there.

Karen McCarthy:

I will admit that sometimes I will speed up and I'll catch up to other people and I'll be like, "Boring lawyer talk back there. Don't drop back."

Jonathan Fansmith:

But those are the ones when, as soon as this was announced, my lawyer friends, the lawyers here at ACE, when we would talk about it, would say, "Who actually has standing? Well, probably only the servicers, right? It's a benefit to everyone who participates in the loan program except for them." I also think it was really interesting, the three conservative judges who challenged some of the standing arguments, Chief Justice Roberts, Gorsuch, and Kavanaugh, it was not an unambiguous challenge to the standing, but they had some pretty pointed questions. They definitely raised concerns about whether those plaintiffs had the right to be there and assert this. I do tend to think, if you are hopeful that this program will survive, the administration certainly is, that's where you hang your hat. If it gets past standing, you've lost, but standing might be the place where this collapses for the plaintiffs.

Justin Draeger:

Yeah. The implications for standing are pretty widespread, too, because they're not ruling on just this narrow issue, and, ultimately, maybe they end up doing that, but the implications for standing are pretty far and wide because you're talking about who controls this entity, MOHELA. It's a quasi-public entity, but who ultimately controls it? And then, if they rule that the state is ultimately harmed, but doesn't have direct control over this entity, how might that be applied in all these subsequent cases? And you even heard the justices, across the board, fall apart and joke with one another about all these other

instances where they've argued about standing in these quasi-public instances. I don't know. There's a lot of precedent that could be set when you get into standing.

The other interesting, and I have no inside information here about MOHELA or any of the servicers decisions to sue or not to sue, but you're talking about a contractor with the Department of Education. We've seen contractors sue the Department of Education before. We've seen them raise legal challenges. Usually, though, that's an action of last resort because your odds of getting a future contract when you've sued your contractor go way down. There's a certain amount of calculus you're doing here when you are suing someone, not to mention the reputational risk you run of saying, "We have now run aground the chances of tens of millions of borrowers receiving loan forgiveness because we are claiming financial harm." I just think there's a certain amount of calculus that went into that decision upfront and now in the long term. But if I am part of the debt collective or the millions of borrowers who stand to benefit from debt forgiveness, boy, I am thanking my lucky stars that MOHELA did not sue the Department of Education right now.

And MOHELA has made clear that they are only cooperating to the extent that they are required to by law through discovery.

Jonathan Fansmith:

Very publicly clear about that.

Justin Draeger:

Right, right. Anyway, at this point, we are not waiting weeks, we are likely waiting months for the final verdict here. In the meantime, borrowers continue to be stuck in limbo. We probably won't see anything, what, until May or June, and we'll be going right into the NASFAA conference. The other, I think, worrisome part about all of this is that I think there are two implications, and I wonder if you both agree with this or not, and, if not, that that's great, just call me out on it. There are two things that are worrisome about this. One is that the White House has been pretty clear, and I think the White House spokesperson actually said this just yesterday, again, reaffirm that there is no plan on the other side of this. If debt forgiveness is struck down by the Court, that there is not another plan, and they are planning for borrowers to enter repayment, whatever that looks like, within 60 days of this Court case being struck by the Court, so it looks like it will finally be upon us.

The second thing is it's hard to overstate, at this point, by the president taking this sort of action, and with the president's new IDR proposal, it is hard to overstate how far apart Republicans and Democrats are on Capitol Hill on student loan reform, maybe all higher ed reform, but it is hard to overstate. There are certain bridges that you cross, and when I go talk to folks on Capitol Hill, it seems like we've crossed another bridge, and so the political precipice of this, I don't know, seems like, if it was possible to be even further apart, it seems like we are. What do you think? What do you guys-

Jonathan Fansmith:

Yeah, I think that's so interesting, Justin, because I would say, on Capitol Hill, there's probably a lot of bipartisan agreement on what loan reform should look like. We've seen multiple legislative proposals that mimic, in broad strokes, from both sides of the aisle, interest in that. What's a big area, and is widening the partisan gap, is the administration's actions, and in some ways, there is a partisan element to this in that Democrats are supportive of it and Republicans are opposing it. You could argue that Democrats should be concerned about an administration's executive overreach and implementing

programs to executive authorities. Certainly, Democrats hate that when Republican administrations do it.

Justin Draeger:

Right. Well, nobody thinks two to four years down the road. The Democrats just lived through a Trump administration where he tried to unilaterally just cancel DACA and was saved by the Supreme Court. Four years later, the Supreme Court is now evil and and going to strike down debt forgiveness. It's just like there's no memory beyond two to four years. I don't know what to say about that.

Jonathan Fansmith:

Yeah, politics is definitely the memories of fruit flies, you just move on. We have talked about this. There is a lot of bipartisan agreement on what needs to be done to reform our student lending system, but that's on the policy side. This political dimension, and this is the political dimension, this is Republicans versus Democrats, this is a Democratic administration versus a Republican house. In a lot of ways, that's where the divide is. And that's just ramping up the rhetoric, that's increasing the partisanship, because, whatever your perspective is, certainly, the perception among Republicans is this is, in many ways, an illegal action and it follows other actions that, if not illegal, certainly exceed the authority Congress has given to the administration to do things around IDR reform or other things.

Justin Draeger:

I think people could legitimately call me out for this. Maybe I'm living in an alternate universe. I cop to this. First of all, this part, nobody could call me out for, what would be undoubtedly legal, this would be legal, if Congress had said there's going to be debt forgiveness, nobody would question that. That would be absolutely legal. Now, this part, people could call me out and say I'm crazy, but if there had been a bipartisan movement in Congress for both loan reform and some debt forgiveness, now I don't know if it would've been \$20,000 for Pell Grant recipients, but if there had been debt forgiveness as part of a bipartisan agreement, I wonder if they could have reached some agreement on some broad strokes student loan reform with some debt forgiveness as part of it. Maybe it wouldn't have been as generous as the president's proposal, but maybe debt forgiveness could have been part of something. I just don't know. No, I'm sure people would call me out. Maybe I am a lunatic, but-

Jonathan Fansmith:

No, I don't think that's crazy at all. Honestly, I think-

Karen McCarthy:

I don't either. Of course, you're my boss, but I don't think it's crazy, no, absolutely not.

Justin Draeger:

Yeah, right, yeah. Good. Karen.

Jonathan Fansmith:

You're not my boss, so I can tell you're crazy, but in this case, I don't think you are; on other things, certainly. There's process problems with that. Loan reform costs a lot of money, and you add forgiveness, it costs a lot of money, so doing it through Congress is really, really hard that way. We have certainly had lots of conversations with Republicans about the idea, prior to this whole thing becoming

so politicized, the idea of targeted forgiveness. Borrowers, especially with low amounts of money who, for a variety of reasons, probably shouldn't have borrowed or were harmed by their experience in post-secondary education, I don't think the idea that there are some borrowers who should have loans forgiven, that's a way of improving our lending portfolio and improving our student lending system, I don't think that's necessarily a crazy thing that there's huge partisan divide on. I think now it is just because the administration went forward with executive action to do broad-based loan forgiveness on the scale that Republicans clearly did not want.

Justin Draeger:

Well, now that the three of us agree that I'm not crazy, let me tell you some polling numbers that also let me think that I'm not crazy, okay? President Biden's approval ratings, as of February, according to Gallup, 42% approve, 54% disapprove. The SCOTUS approval rating, and the last numbers I have are from Gallup, this would've been back in September because we don't do SCOTUS all the time, nobody cares unless they do something really controversial, this would've been right after overturning Roe v. Wade, but it was around 40% approval rating at the time. POTUS and SCOTUS are around the same amount. Congress, this would've been February, 18%. Now that's Congress as a whole, 18%. Debt forgiveness, this would've been Ipsos and NPR back in July, and this is when we were battling around \$10,000 before the President unveiled his plan, 55% approved some debt forgiveness.

I take 40% approve to SCOTUS, 42% POTUS, Congress was, abysmally, around 20%, and 55% of the American public approved some debt forgiveness. What that tells me is, if anybody needs a win, it's Congress, and most people approved at least some debt forgiveness. That's why I say the easy route for Democrats was just to have the president do it, it didn't require any negotiation, just do it. The problem is it could go down in flames in the Supreme Court, and there's no backup plan apparently. And then the odds of Congress being able to do it seem really low now, where the one branch of government that needed a victory was Congress, and it would've been a lot harder politically, but policy-wise, Jon, as you pointed out, I feel like there was a lot of overlap, I agree with you, and where there was this already public opinion coalescing around was some debt forgiveness.

I just feel like people weren't willing to put in the work, but there could have been some really broad strokes around student loan reform and debt forgiveness as part of that. Maybe not as generous as 20,000, but there could have been some, and it was a really missed opportunity and one I don't know that we'll get back on the other side of this. Now, if SCOTUS upholds all of this, maybe everything I just said will be for naught and we'll never revisit this conversation, but I don't know. Time will tell and maybe I'll just eat my words. We'll see.

Okay. Let's change the topic for just a moment. We talked about this on last week's episode. Jill helped us string out some of the implications that I know NASFAA has been working on. Jon, you and our friends over at ACE have been also leading the charge on some of the implications of this third-party servicer guidance. We've got some updated news from our friends at the Department of Education. Can you catch us up briefly and we can talk about this?

Jonathan Fansmith:

Yeah. I'm happy to talk about this as a true tribute to the power of the higher education lobby here in Washington.

Karen McCarthy:

Yeah. You did it, Jon.

Jonathan Fansmith:

I'm joking, and I know you talked about this on your previous episode, this is one of those things where the guidance came out and I think it just caught institutions completely off guard. And then when they realized the implications, they were shocked, and I think the Department of Education heard that. We did put a letter out, we put a letter to the department last Friday, that essentially said, "Your timeframe is very accelerated." It's going to be something that institutions ... they are struggling to understand what this new guidance says, and what's more, if you want them to report a list of contractors who fall under this guidance by May 1st, which was what the original dear colleague later had said, they're just not going to be in compliance, that they're going to struggle to find that information in the first place. They're going to struggle to identify who qualifies under the guidance. We need an extension.

Joking about the effectiveness, but we sent that letter on Friday, on Tuesday, the Department of Education announced that the extension had been granted, and I think of it as good news/bad news. For our institutions, all good news. The department moved both the effective date of the guidance as well as that deadline for institutions to report all the way back to September 1st. Buys institutions a lot more time to process this, come to terms, examine their contracts, put the processes in place they need to do. From the lobbyist side of it, it was terrible. They only gave us about 15 more days to file our comments.

Karen McCarthy:

Yeah, it's not a lot longer.

Jonathan Fansmith:

No, it's not a lot longer. We asked for 30 days in our letter and we got 15, so I think we'll take the trade off on behalf of our members, but we're going to be cranking away, and this is technical, complicated stuff. Those are going to be fun comments to assemble. It is certainly a good thing by the department. I think the department was hearing the same things from campuses that we were hearing from campuses. I think they understood the points we raised, and I think they realized that, even if it wasn't intended, and I think clearly it was not intended by the department, what they did has caused a lot of confusion and a lot of anxiety.

Justin Draeger:

Well, okay, Jon, so let me ask you about that, okay? What happened? What is the deal here?

Jonathan Fansmith:

Yeah.

Justin Draeger:

Is that it? Do you really - Let's peel back the onion for a second. A lot of advocacy groups, not representing institutions, were either playing this as, "What? This doesn't say anything new. This is consistent with DCLs that have been coming out for the last 10 years. This is really aimed at OPMs," which I could accept that. We've been telling our members for the last year, if you have an online program manager, you should be taking a close look at those contracts. That's been very clear.

Incentive compensation packages with OPMs is something that's been coming under a lot of scrutiny, as probably it should, so you should be taking a look at that, and OPMs in general have been encroaching into institutional territory for a while, so we need to take a much closer look at that. But then these groups have been saying like, "Oh, this is nothing. This is a nothing burger. Schools are overplaying this."

And then we see the guidance and it's just so far-reaching that it goes into the just absurd. And so I guess I'm wondering, did the department intend this? Was this just sloppy? Was this just like they lifted something from the advocacy groups and threw it out there and had no idea what they were doing? What happened? Who is reviewing stuff? What happened here?

Jonathan Fansmith:

Has this become a conspiracy theory pod? Okay.

Justin Draeger:

Yeah.

Jonathan Fansmith:

I may have to sever my relationship.

Justin Draeger:

I have not picked up the phone and called anyone at the department, but I just want to know what happened.

Jonathan Fansmith:

And I'm not going to speak to other people's minds, but I will-

Karen McCarthy:

You said, "I don't think this is what they intended," but when you look at the wording, how did they not realize what they were doing? Yeah, what happened?

Jonathan Fansmith:

I think there's a way you can think about this to understand their perspective. This is how I think about it. They have been trying to get at where they see the problems in these relationships with online program managers, and they've been thinking about this and working on this for a while, and there is a lot of public attention, for higher ed policy world, there's a lot of public and media attention around those relationships and where they've seen abuses. The problem is when you're talking about what authority they have available to them and then how do you define what these organizations are because the relationships look really different contract to contract, there's not a standard sort of OPM provision, "This is what we do." It varies a lot based on the institution, based on the provider, based on what they're attempting to accomplish.

If you take all those factions into account, what you have is a classic federal policymaking problem, which is you need to be expansive enough that you capture all the varieties of what you're worried about. The problem is, when you're expansive enough to capture all the varieties that you're worried about, you're also expansive enough to capture all the varieties you're not worried about. And I do legitimately think the department's aim was to say, "We're going to make sure we address the problem." And they probably, again, maybe I'm giving them the benefit of the doubt here, but I think they probably did not realize that, by focusing on one area, they didn't have their peripheral vision up for all of the other things that were going to happen as a result. I think the fact that they granted an extension so quickly speaks to the fact that they-

Karen McCarthy:

Acknowledged.

Jonathan Fansmith:

... really underestimated exactly what the impact of that guidance would be. The effective date of the guidance when they first put it out was the day it was put out, but they delayed that til September 1st. That is a very meaningful change to me. That's saying, "Look, we need a lot more time to figure out what this means. We're going to have a negotiated rulemaking session on third-party servicers sometime this year." There's the comment period around bundled services exceptions where they're going to solicit public feedback and written comments. There's a lot that can now happen between now and September 1st that can help them, I think, really narrow the focus and get the target back on what they were looking at.

I don't buy the conspiracy theory that this was actually an attempt to somehow go after the online education space or to restrict ... I saw one that was, essentially, this was all because the teachers unions are tied to the administration and that, if you cut back outsourcing, then you'll force institutions to hire more staff, which will increase the number of members. There are some actual crazy conspiracy theories about this, but I think they're crazy conspiracy theories. I think this is just more a really natural and inevitable and, frankly, regular occurrence of federal policymaking, which is you're far too broad in what you're trying to do because you're focused on the one thing and you don't see all the other parts.

Justin Draeger:

So sloppy?

Jonathan Fansmith:

Oh, no. See?

Justin Draeger:

If I had to put it under one word, it would be sloppy. That's fine. No. Okay, so you didn't say sloppy, but I did.

Jonathan Fansmith:

I definitely did not. For anyone listening, I did not say sloppy. Those were Justin's words.

Justin Draeger:

No, it's not a conspiracy theory. That's helpful. But it was being cheered though. The original posting was being cheered by some advocacy groups, though. Which makes me feel like, that's the part that felt very intentional though, because the fact that it was being cheered on by some made me feel like, well, maybe it was meant to be overly-broad. It was meant to be all-encompassing.

Jonathan Fansmith:

Oh, no. I think, look, we've been talking about OPMs for a long time, and there's been some really highly public examples of bad experiences students have had and bad relationships, frankly, institutions have had with OPMs, and I think a lot of those groups were happy to see the department acting in this area. I

don't think necessarily that was reflective of the fact that they thought it would have these broader impacts that we're worried about.

Justin Draeger:

Just based on the original definitions, and I don't know if we talked about this last week, but even some of the definitions around software providers and if the software provider retains control of the software, that's every software model that exists today. This is not like 1998 where you get a software disc.

Jonathan Fansmith:

Buy the disc.

Justin Draeger:

Yeah, you buy a disc, and then everybody burns a copy of that disc. That model doesn't exist anymore. NASFAA, for example, provides a PMP builder that we update with regulations so that everybody can have their policies and procedures up to date. If NASFAA is, all of a sudden, a third- priority servicer because we provide schools with a PMP module, guess what? We won't offer that anymore, or I don't think we would, because we're not going to go through a Department of Education Title IV-

Karen McCarthy:

Compliance audit?

Justin Draeger:

... audit process.

Karen McCarthy:

No?

Justin Draeger:

No.

Karen McCarthy:

No?

Justin Draeger:

Right. This is where I'm saying it just seemed like it was either really well-thought-out or not thought out at all. The fact that, if the department is now saying, "Okay, well, we need to reconsider this," then I'm very heartened by the fact that they are reconsidering maybe the broad, unintentional reach of maybe some of that prior clarification.

All right. Karen, we have a Poll the Pros in Today's News that's looking at something, and I'm curious if you have some preliminary numbers for us. I don't think, as it rounds out, we're going to probably see a change in the distribution. Why don't you catch us up on the Poll the Pros and some of the implications here?

Karen McCarthy:

Yeah. This issue is related to the 24-25 FAFSA, and there were some members who very closely looked at the draft ISR layout that was released, and they noticed that they will not be getting information about students' housing choices anymore. And so we followed up with the department, it's not part of the EFC/SAI formula, so we hadn't gotten down to that level of detail, asked, hey, what happened to the housing question? And the response from them was that, under one of the provisions of the FAFSA Simplification Act, they are forbidden from asking any additional questions on the FAFSA for purposes of federal financial aid. And so their attorney's interpretation is that they did not have the authority to ask that housing question about the housing plans at each institution. And that has really bubbled up as a major issue that schools have raised, that this is a big problem for them, that they use the answers to that question to properly construct the cost of attendance.

And, as we all know, cost of attendance is related to federal financial aid, so there is that issue of the department's legal interpretation and how that might be a little bit squishy, and you might come to a different conclusion on what that prohibition in the FAFSA Simplification Act actually says, and the authority it grants or doesn't grant. But, as of right now, the housing question is not planned for 24-25. The Poll the Pros that we just rolled out this morning basically asks institutions, "What are you doing with that?" Some institutions weren't using that question anyway, so they don't care. That was one of the options, "We get it elsewhere or we don't use it. All of our living allowances and the cost of attendance are the same, or different categories are the same, so we don't need that level of detail." Some institutions said that they will be collecting it in some other way, an existing process or making a new process.

And then we also had an option of, "I didn't even know this was going away, so this is news to me." We did pull the preliminary responses after it had been up maybe two to three hours. There are about 400 responses so far. And, by far, the two responses, the most common responses, "We were not aware that the housing question will not be on the 24-25 FAFSA," so they are just getting up to speed there, and then the second most common question are the people who are a little bit farther along, that they are aware that it will not be on the FAFSA, but they haven't figured out what they're going to do about that yet. They're in the stage two of their process of what to do about this housing question going away.

Justin Draeger:

Karen, I would put this under the heading of "We Have a Problem."

Karen McCarthy:

Yes. I think we at NASFAA are ... we have a two-pronged approach to this. One is to make people aware, as of right now, housing question is not there. Do you use it? If you're using it, you need to have conversations about what your plan B is going to be. And then, at the same time, we're also trying to get more information and engage in discussions with the department about their legal interpretation and do you really not have the authority to include that question and make the case of why schools need this for purposes of constructing their cost of attendance. But both of those things, we're working at the same time.

Justin Draeger:

Right. It actually is a component of financial aid. It's just this side of the equation, which is the cost of attendance side. Both sides are necessary. You have to have the FM side, which calculates the student's SAI, but you also need this side, which is the cost of attendance side. And the FAFSA working group that we have with our members has also raised this issue with the Department of Education.

Karen McCarthy:

Yes. I think it is fair to say that they have heard the concerns and we're trying to get them to talk about what the next steps are, if they're willing to further engage on that. Yeah, that's where we are right now.

Justin Draeger:

Well, this won't be a representative sample because we're not tracking by institution type, et cetera, et cetera. We will certainly share the results of the survey with the department as well.

Karen McCarthy:

Yes. I would encourage anyone who's listening who hasn't seen it to definitely ... it's just a one-question survey. Yeah, it's a Poll the Pros, so we don't ask for any identifiers. There's no data. Just a quick answer the question. Please do submit that.

Justin Draeger:

Okay. All right, Jon, Karen, as always, glad to have you on the podcast. Thanks very much for joining us.

Jonathan Fansmith:

Good to be here. I should say, by the way, Justin, I was speaking before a group of financial aid professionals yesterday, and what is happening on a recurring basis, somebody said they loved my podcast and they meant "Off the Cuff." Yeah. again-

Justin Draeger:

Wait, hold on a second, hold on a second. Wait a moment. They said they love-

Jonathan Fansmith:

They love me on the podcast.

Justin Draeger:

Oh. They didn't say they love your podcast.

Jonathan Fansmith:

Right, and I got excited and then they clarified "Off the Cuff." I'll finish by saying, dotEDU, ACE's higher education Policy podcast of which I am the host, please check it out.

Justin Draeger:

Yeah. Well, Jon, there's one surefire way to drum up business and that is to have me back on the ACE podcast and I will bring some portion of our listeners over there. Okay? Let me know.

Jonathan Fansmith:

I will try. I will say, some of our lowest rated episodes though, Justin

Justin Draeger:

Of that, I have no doubt. All right, let's bring Maria back in. Maria, why don't you catch us up? What's going on in the news this week?

Maria Carrasco:

Last week, a federal judge ruled that \$6 billion in student debt relief for 200,000 borrowers can move forward. The debt relief is part of a settlement agreement from Sweet v. Cardona, which was first filed in 2019 under former President Donald Trump. The plaintiffs accused Trump's Department of Education of failing to process their borrower defense claims. We'll have an article detailing more of the settlement in our show notes.

Justin Draeger:

Okay, fantastic. Thanks for that update. What else is going on?

Maria Carrasco:

Day before the Supreme Court met to hear oral arguments on Biden's student loan debt relief program, Senator Elizabeth Warren released a report outlining the impact if the program was struck down. For this report, Warren asked nearly 20 advocacy groups, including the NAACP and the Debt Collective, to tell her how failure to deliver this debt relief program would impact their members. We'll have a link to the report in the show notes if listeners want to read more.

Justin Draeger:

All right. Anything else?

Maria Carrasco:

Career Colleges & Schools of Texas, a trade group representing for-profit schools, on Tuesday, filed a lawsuit against the Department of Education's new borrower defense rules. The borrower defense to repayment rules were finalized by the Department of Education last year and are said to take effect on July 1st. The lawsuit, which is filed under Northern District of Texas, asks a judge to stop the borrower defense rules from taking effect, arguing that they are unconstitutional and illegal. We'll be keeping an eye on this lawsuit, so stay tuned to Today's News.

Justin Draeger:

Will do that, and they can find all of these articles and more in our show notes and in Today's News. Also want to give you a shout-out, Maria, you did a great job on a HBCU article that I read in Today's News this last week. You went out and talked to several folks who are experts on HBCU funding and some of the struggles that they've had in maintaining funding over the years. Great article that folks should check out, talks about some of the inequities in funding, and how some of the schools are struggling to make ends meet and are still coming up with some really innovative programs and outcomes despite some of those funding challenges. Really gets into some of the equity challenges that we have across education, but why don't we put that article in the show notes as well?

For those of you who are in our community, feel free to discuss any or all of these topics there. We check into those comments from time to time. Thank you all for listening. Remember to subscribe. If you get a moment, please leave us a review on your podcast app of choice. That helps other people find the podcast. And thanks for listening. We look forward to talking to you again very, very soon.