

NASFAA's "Off the Cuff" Podcast – Episode 268 Transcript

OTC Inside the Beltway: The SCOTUS Recap

Justin Draeger:

Hey everybody. Welcome to another edition of "Off the Cuff." I'm Justin Draeger.

Rachel Rotunda:

I'm Rachel Rotunda, NASFAA's Policy Team.

Jonathan Fansmith:

And I'm Jon Fansmith with ACE's Government Relations Team.

Justin Draeger:

Welcome everybody. This is our first podcast back since, I think, we are back from our annual meeting and then the 4th of July and yada, yada, yada. So we are back. Karen is off on vacation. I don't even know exactly where she went. She's on some beach. But she joined us for our virtual conference this last week and then she was back offline, so we are respecting her time. I've only texted her like 30 times in the last two days.

Jonathan Fansmith:

Very respectful. Yeah.

Justin Draeger:

Yes, obviously being very respectful. But we've got Rachel here. Rachel, I have a question for you.

Rachel Rotunda:

Yes.

Justin Draeger:

You joined us for the opening session on Tuesday when we had James Kvaal on our virtual conference.

Rachel Rotunda:

I did, yeah.

Justin Draeger:

And my question for you is this: I brought you in at the end. You were helping sorting questions. James had to leave at a quarter till and then I brought you in for some post-game analysis. So Jon, we had James, he spoke, and then he left. And so, then I brought Rachel in. We were like commentators at a sporting event. We came in and then we broke it down-

Jonathan Fansmith:

All right. Play by play?

Justin Draeger:

... live.

Jonathan Fansmith:

Yeah.

Justin Draeger:

Yeah. It was like that, "What did you think when James said this?" What did you think when James that?"

Jonathan Fansmith:

Was in that excited hushed tone like that?

Justin Draeger:

Yeah. Kind of.

Rachel Rotunda:

It was exactly like that.

Justin Draeger:

But Rachel, my question is, did I get your title right?

Rachel Rotunda:

I don't think so. I can't really remember, but I think that you didn't.

Justin Draeger:

All right. Here's what I want to point out, all right? Jon, do you know everybody's precise title on your team?

Jonathan Fansmith:

I believe that I do. The only problem I occasionally make is I forget whether AC uses assistant or associate for something. So we have... I think it's assistant vice president, but in my mind it's always associate vice president.

Justin Draeger:

Well, you said you think you do and then you just said that you're not totally sure. But here's the discrepancy, okay? What is Karen's title, Rachel? Give me Karen's total, full title.

Rachel Rotunda:

I think Karen's title is Vice President of Public Policy and Federal Relations.

Justin Draeger:

And your title is Director of-

Rachel Rotunda:

Director of Government Relations, which I understand is confusing.

Justin Draeger:

So in the same department I have a vice president of federal relations, and then I have a director of government relations. And why these two things don't align, basically, I think is to just mess with my head. Because whenever I have the two of you together, I can't ever remember which one is federal and which one is government.

Jonathan Fansmith:

And Justin, if only you knew somebody who could do something about that. Is there a comment box at NASFAA you could send it to? Somebody with the authority to act on this?

Justin Draeger:

The bureaucracy to change a title at NASFAA is just beyond my control, Jon. You don't even know. I mean, first we have to submit a comment period, and then we have to collect comments on that.

Jonathan Fansmith:

Invite all appropriate stakeholders to the table. Right.

Justin Draeger:

Yeah. It's like a 60-day comment period, then we have to go out to the membership; it's a whole thing. So I think I for sure screwed it up, because I definitely said federal relations. And I'm thankful, Rachel, you didn't call me out on it.

Rachel Rotunda:

Yeah, but you can use it interchangeably. I know what you mean.

Justin Draeger:

All right. All right. All right, quick question for you all. At the conference... Jon, you obviously follow NASFAA on all your social media feeds.

Jonathan Fansmith:

All of them, including my fake ones.

Justin Draeger:

All right. Here's my question for you: which is... Let's be honest, okay? This isn't the image of Jon Fansmith you want to portray. Let's be real. I want to know the real Jon Fansmith.

Jonathan Fansmith:

Go on.

Justin Draeger:

I want to know, what is the social media platform you use the most? What do you use the most? Really?
It's okay.

Jonathan Fansmith:

Twitter.

Justin Draeger:

Just tell us honestly.

Jonathan Fansmith:

It's Twitter.

Justin Draeger:

Who are you?

Jonathan Fansmith:

But I am phasing out of Twitter. I joined Threads last week.

Justin Draeger:

Yeah, I joined Threads. Yeah.

Jonathan Fansmith:

I went through the whole thing and there's not a lot of people I follow on Twitter who have yet moved over to Threads. I'm going to try to make a go of Threads. I've had it with Twitter. But Twitter's absolutely still probably the one I use the most. Then Instagram. I am not on Facebook. I'm not on TikTok. I think that's probably it.

Justin Draeger:

So it's Twitter. Although I think we can all... Well, I don't know. For me too. It used to be Twitter was the most. It's just turned into a... Honestly, I was like, "Oh, Elon Musk. Whatever. I don't care." But it has gotten-

Jonathan Fansmith:

It's a bad user experience now. Yeah, it's just not-

Justin Draeger:

Yeah. It's not philosophical for me as much as it's just not as good.

Jonathan Fansmith:

Yeah, I'm the same.

Justin Draeger:

All right. How about you, Rachel? Be honest. Give us the real Rachel Rotunda. What is the social media platform you use the most?

Rachel Rotunda:

I would say Instagram. Number one for me.

Justin Draeger:

Okay. When I was at the conference, there was a Justin takeover day of the NASFAA Instagrams, and Instagram is not the platform I use the most. Facebook is probably where I have the most connections, but I don't know, maybe Twitter. I don't know. But I don't use Facebook or Instagram that much. Jon, you don't use Instagram that much. You said that was like your second. You don't talk into it, you don't create stories, you don't-

Jonathan Fansmith:

Yeah. No, on any platform I'm a pretty passive user. I'm a reader, not a contributor. And definitely Instagram I'm far less active even than I am on Twitter.

Justin Draeger:

And Rachel, do you talk into the camera very much on your Instagram?

Rachel Rotunda:

No.

Justin Draeger:

You're like, "Hey, all you Rachel followers-

Jonathan Fansmith:

Rachel-heads.

Rachel Rotunda:

No, I'm a lurker for sure. For sure a lurker. I probably post one time a year. So yeah, I wouldn't say I'm particularly active in putting my thoughts out into the world.

Justin Draeger:

Well, on the Instagram thing, I was asked by our comms team to do it, and so I did it and I recorded myself. It was the most awkward... I mean, I felt incredibly awkward about it the entire day, and self-conscious about it. Which, all three of us, we present a lot, we speak a lot, we do a ton of public speaking. you would think that you wouldn't feel that awkward talking into your phone.

Jonathan Fansmith:

I'm really eager to go watch this now. I did not watch it.

Justin Draeger:

I don't know if you can. First of all, I don't know how any of it works. I recorded it, it's on video.

Jonathan Fansmith:

Posted to your Instagram, right? Isn't that how I would find it?

Justin Draeger:

Well, I don't know if it's... Is it only there for 24 hours, or does it go away? I don't know the answer to that.

Rachel Rotunda:

I don't know what they did. They might've saved it.

Justin Draeger:

But I can't bring myself to watch myself. Did you watch any of them, Rachel?

Rachel Rotunda:

Yeah, I watched them.

Justin Draeger:

Rachel.

Rachel Rotunda:

I thought they were great. I thought they were great. You did a great job and then-

Justin Draeger:

Yeah. Of course you did.

Rachel Rotunda:

Intern Abby did the next day. No, I don't-

Justin Draeger:

I don't feel like you can... You receive a paycheck and I'm the head of this organization. I mean, I don't feel like this is an unbiased opinion.

Rachel Rotunda:

I'm not a PR critic.

Jonathan Fansmith:

Is it worth going to Hugh here? Because I feel like he might have some insights.

Justin Draeger:

Yeah. Hugh, your flight got canceled and you couldn't make it to the conference. What did you think?

Hugh Ferguson:

Well, Twitter also broke while I was not at the conference, so my ability to follow it was challenged.

Justin Draeger:

You couldn't carve out 60 seconds to watch my Instagram story?

Hugh Ferguson:

I don't use-

Justin Draeger:

This is a cop out if I ever-

Jonathan Fansmith:

This is him avoiding what he actually thinks. Yes. Yeah.

Justin Draeger:

Yeah. What I take from this is, Hugh thought they were garbage. He's avoiding the question.

Hugh Ferguson:

I have not seen them yet. I'm not in charge of our Instagram channel.

Justin Draeger:

Oh boy. Oh boy. All the answer we need is right here on the-

Jonathan Fansmith:

The tone itself tells you what you need to know.

Justin Draeger:

... cop out answer.

Rachel Rotunda:

I feel that you not enjoying watching it is probably that, that you... That's it, right? You have to re-watch it. When we present, it's like it's said, it's out there. You can't go back and redo it. Whereas with what you were doing, you could redo it as many times as you wanted. And it's just self-critique, not a great thing. Just got to do it and send it. Which is, I think, what I like about presenting.

Jonathan Fansmith:

This raises a question I have for you two, too. Do you listen to the podcast? Do you listen to it after it's made public? Do you listen to it again? Do you listen to yourselves when you're recorded on other podcasts?

Justin Draeger:

I don't listen to myself on other podcasts, no. No offense to-

Jonathan Fansmith:

dotEDU?

Justin Draeger:

... dotEDU when I'm occasionally on. dotEDU, which is a fantastic podcast hosted by ACE-

Jonathan Fansmith:

Thank you, Justin.

Justin Draeger:

... and Jon Fansmith. I think I'm the first threepeter on there. I just want to point out.

Jonathan Fansmith:

You are.

Justin Draeger:

I'm on there this week if people want to switch over.

Rachel Rotunda:

It's like the SNL club for hosting more than five times.

Jonathan Fansmith:

We did joke about getting him a jacket, so yeah. Yeah.

Justin Draeger:

Yeah. I didn't get it. I actually didn't get a prize.

Jonathan Fansmith:

It was a joke. We don't have that kind of budget, Justin. Yeah.

Justin Draeger:

But I actually do listen to myself on this podcast about every six to eight weeks, because I just want to hear. Listening to yourself makes sure you knock out all the ums or any bad habits. I listen just to make sure I'm not engaging in any bad habits. So I do listen. Yeah. Because I don't want this to be trash. Do you listen, Jon?

Jonathan Fansmith:

I do listen, but your reason seems a lot better than my reason.

Justin Draeger:

Is it to itch your narcissism?

Jonathan Fansmith:

No, it's to gauge how embarrassed I should be about what I did basically. Right? There's usually two or three moments that stick in my head after each recording. I'm like, "Did that sound as bad to a general audience as it sounded in my head when I was doing it?"

Justin Draeger:

Oh.

Jonathan Fansmith:

So there's that.

Justin Draeger:

Right. Because you're afraid you said something wrong, or you misstated something, or you said something that was inarticulate?

Jonathan Fansmith:

Yeah, just any one of those things. It's a little bit of quality control. I want to go back and see how I presented something. And there's things that pop in my head. It's like, "Oh, that wasn't seamless, or that transition didn't really work." I don't know that it really gives me anything to improve on for the next time, but I go back and check it out.

Justin Draeger:

The benefit of being me is that I say things wrong so often that it's hard to pick out just one thing. I'm mostly focusing on style, not-

Jonathan Fansmith:

Substance or content. Yes.

Justin Draeger:

... content. Yeah, that's a foregone conclusion.

Jonathan Fansmith:

What about you, Rachel? Do you listen?

Rachel Rotunda:

When I first started doing the podcast, when I first started at NASFAA and was on it every week, I did listen for the reasons that Justin said, of trying to get better at it. I feel like I'm not on enough now for that to really be worth it. I'll just hear my mistakes and be like, "Okay. Well, I'll try to fix that whenever I'm on in the future." But it's not like I could go back to it in a couple of weeks. So no, I usually don't. But I don't know, it's weird to hear yourself talking on a podcast too.

Justin Draeger:

You have to have people around you though that will also be honest. So I think, Hugh, our comms team, I feel like... Do you guys feel like you can be honest with us and just tell us if something's not right, or we need to re-record something? Rachel, do you feel like-

Jonathan Fansmith:

Justin, Hugh did just ask you what he thought of your Instagrams and you saw how he answered. So clearly the answer, at least to Hugh, is no. Right?

Justin Draeger:

This is not a safe place. Obviously I've created a culture-

Jonathan Fansmith:

Fear. Right, exactly.

Justin Draeger:

... of fear and intimidation. Right. Okay. Well, that's a good point. And that's going to be in my forthcoming management book. How to browbeat employees into submission. Be on the lookout for that. It'll be self-published, obviously, at a NASFAA press.

All right. We should probably actually get into some content here. Lots of things happened while we were at the conference. Two Supreme Court cases. The first one... This happened maybe on our opening day. Yeah, was the first one on-

Jonathan Fansmith:

Thursday the 29th, right? Was the first case. Thursday the 29th I think.

Justin Draeger:

Yeah. If that was on a Thursday, that was... The first one came out on race and admissions. It was a majority opinion penned by Chief Justice John Roberts and it stated that the court has permitted race-based admissions only within the confines of really narrow restrictions. Notably, Roberts wrote in the majority opinion that universities could no longer use race in admissions decisions, but it did not bar institutions from considering how an applicant's race has impacted their life, should such a disclosure be made in the process of applying. For purposes of this podcast, I don't think we should get into all of the admissions pieces of that, although that obviously crosses over with a significant portion of our membership. But we answered a lot of media calls while we were at our conference on how this might impact financial aid, and we saw attorneys general specifically in the states of Missouri and Kentucky start issuing orders how this would impact scholarship aid.

But before we get into all of that, Jon, I just wonder if you could provide some perspective from the presidential side on how this has impacted colleges and universities, how college presidents are looking at this, where they see the boundaries of this ruling.

Jonathan Fansmith:

Yeah. I think the first place to start is to say there's a lot that we still really don't know. I mean, the decision was very strong, very clear when you speak very narrowly about the consideration of race in admissions. Even that point you made, Justin, which was going in what we'd hoped to be the silver lining about within an essay or a disclosure of race and how it's affected the individual applicant, there was some expectation we would see that based on where the oral arguments went. But the majority opinion then also codified but this can't be used in a systematic way. We'll let you think about the context of race as it relates to an individual, but you can't have an essay portion that asks people to talk about race as a way around this. Even that limited bit of silver lining in there was pretty narrowly constrained.

We're upset. This is 40 years of precedent overturned. We think that the arguments made frankly ignored most of the compelling arguments that have been considered and upheld by the court in previous decisions about the importance of a diverse campus, the educational value of a diverse campus to all students, not just students of color. Frankly, as we've seen in study after study, consideration of

race in admissions is the single most effective way to ensure that you can build a diverse campus. Taking that away is going to make it harder for institutions to look like the communities they're located in, to give their students the opportunity to interact with people with different experiences, different life's experiences, different viewpoints, different perspectives.

It is fundamentally, I think, a bad decision. I am not qualified to speak to legal issues. I am in many ways repeating what actual constitutional lawyers have talked to me about or told me, or that I've read. But in a lot of ways we also saw this coming, right? In some ways this was a foregone conclusion. There's a lot of frustration.

Most importantly though, I'll say from a presidential perspective, nothing about that decision changes the ability of an institution to work towards their mission and to include diversity as part of that mission. Even the opinion itself upheld that institutions have every right to act according to their missions. They just essentially took the biggest tool out of the toolbox in ensuring that, when diversity is part of your mission, you can build a campus that way.

Justin Draeger:

Thanks, Jon. I think that's really helpful. At our conference we had a lot of questions and addressed this that night at our opening session and in the subsequent days. I also want to pause and just point out that next week on July 19th, NASFAA, along with our partners at AACRAO and NACAC and Education Council, will be holding a webinar for all of our members with Art Coleman, Yolanda Copeland-Morgan, who recently retired as Vice Provost of Enrollment from UCLA, Vern Granger from University of Connecticut, Derek Kindle, Vice Provost for Enrollment Management at University of Wisconsin-Madison, Angel Perez, who's the CEO at NACAC. And our own Karen McCarthy will be hosting a webinar diving into these issues on enrollment management, admissions, financial aid.

But at our conference we stressed, one, as it relates to financial aid at least, it would be imprudent not to think that this will spin out from admissions, which is where this was squarely focused, into other areas like financial aid, employment data, excuse me, employment data collection; that the legal boundaries will be pushed. A lot of those pushes will happen at the state level first. That's where the legal battles are generally first fought. That we should resist the urge to make changes immediately, that we want to be deliberate about the changes that we make. But that schools probably already have started, but if not should start doing data analysis so that they can do risk assessments and deliver that up to their executive offices, the college presidents that you and ACE represent, Jon. So that presidents have the information and data they need to do an assessment given the climate in which they're operating.

The aid offices can also start doing analyses about alternatives if they find that the risk assessment that they do is too risky to be using race as one of the overriding criteria in their scholarship awarding. Maybe they want to look at other awarding criteria, like pool and matching. Pooling all financial aid dollars and then awarding those out and maybe doing some matching.

All of that is to say that schools can be doing some proactive work now. They don't have to be hasty. Of course, if you live in a state where there are orders from an attorney general, you need to be working with your own legal counsel and your president on those issues and more to come.

I guess the only other thing I would say is, at NASFAA we of course embrace diversity in the fullest sense of the word, including obviously race and ethnicity. And despite the Supreme Court ruling, we still have to acknowledge that there are significant racial gaps when it comes to college access and degree attainment. Nothing about this ruling changes the facts on the ground.

Jonathan Fansmith:

Yeah.

Justin Draeger:

We still have to work towards a more equitable existence and future, and we'll have to work harder to close those gaps.

Jonathan Fansmith:

Yeah. This makes that work harder, it doesn't make it any less important.

Justin Draeger:

No. Second case, and this one came out the next day at our conference. I think this happened the morning that we were running our charity 5K. We were in San Diego, Jon. This was like three hours behind everybody else, so our 5K was at 8:00 AM. We were walking out to the 5K. So yeah, 10:00 AM. 7:00 AM we were walking out, the case landed. We were just about to start the 5K and then the media calls started pouring in. I mean, I'm not bragging or anything, but-

Jonathan Fansmith:

Did you take calls while jogging? Is that what you're trying to say? Uh-huh. Yeah.

Justin Draeger:

That's exactly where I was headed.

Jonathan Fansmith:

Yeah.

Justin Draeger:

I still did a 30-minute 5K. What I wanted to get out. If you take anything from this story, that's-

Jonathan Fansmith:

While giving press calls, Justin. You're the superman of higher ed policy now.

Justin Draeger:

Thank you, Jon. That's where I was headed.

Jonathan Fansmith:

This is why I keep getting invited back, because I can feed you those lines.

Justin Draeger:

I set them up, you knock them down.

Jonathan Fansmith:

There you go.

Justin Draeger:

So anyway, we got this. And this is obviously disappointing news for the millions of borrowers who have been in limbo since last summer/fall waiting for debt forgiveness. Then the unexpected part was that the Biden administration came out later that day and announced that they were going to pursue debt forgiveness through another avenue. Jon, you want to catch us up on the administration's plans for debt forgiveness?

Jonathan Fansmith:

Yeah. And I want to point to something you said too about how this was unexpected. Because while you were at your conference, I was lucky enough to be invited to attend the National Association of College and University Attorneys Conference in Chicago, which was an interesting place to be, obviously. I arrived on Thursday that the UNC-Harvard decisions were handed down, and I presented. My presentation started at 10 o'clock on Friday morning, East Coast Time. Or actually, started a little bit before that. So the decision and the loan forgiveness case was actually being handed down while I was presenting, and we had some live check-ins with what the court was doing. Which I didn't handle that admirably, because the first one I saw, the two plaintiffs, they ruled that they didn't have standing. So SCOTUS blog posted this thing that said, "Court finds no standing." And I was like, "Whoa, this is a huge upset." And a room full of lawyers were like, "No, not exactly, chief. Read a little deeper." So, a rough audience to be screwing up on the Supreme Court rulings in front of, but they were very gracious with me.

Anyway, it was very unexpected. I mean, part of my presentation was we kind of knew that the court was going to strike this down, and we knew what the Biden administration had tipped their hand about that they were going to do, the IDR plan, the new SAVE IDR plan, as one big component. Some more gentle treatment of borrowers entering repayment. But the ruling itself was pretty clear, and certainly the Supreme Court's attitude towards the plan itself was pretty clear; didn't seem to offer the possibility of an alternative. And there had been, frankly, a lot of coverage in Washington DC in the trade papers leading up to the decision saying, "Look, the Biden administration, really, their hands are tied. They don't have a lot of options here, so they're going to look at managing repayment as a way of addressing the fact that they can't do forgiveness."

Justin Draeger:

No plan B. No plan B.

Jonathan Fansmith:

No plan B.

Justin Draeger:

That's what we heard over and over again.

Jonathan Fansmith:

Over and over again. Exactly right. No plan B. But they had a plan B. It may have been a relatively quickly assembled plan B based on how things were announced and whatnot. But we are moving to a proposal for a negotiated rulemaking to implement forgiveness for, as they've described it, low- and middle-income borrowers. Probably assume it's going to be looking around those same income thresholds their original forgiveness plan did. They are looking for public comments on the 18th of July, so very soon, and then from there they will proceed towards a rulemaking session. What that looks like, the timeframe, I don't know.

Maybe more importantly, it's also not really clear where this will ultimately go. Even if you go through rulemaking and you promulgate a regulation that allows for the secretary... And I should say, this is under Section 432(a) of the Higher Education Act, which has long been disputed as to whether the secretary... whether that language gives him the authority to forgive loans. If they come forward with the regulation it says that the secretary does have the authority. And they move forward with it, it's very, very hard to envision that not being immediately challenged in court. And given-

Justin Draeger:

Okay, so let me pause for a second here, Jon, because I want to focus on this. Let's do some conjecture. I want to focus. This is all conjecture on my part. I assume on your part too.

Jonathan Fansmith:

I'll play along.

Justin Draeger:

James Kvaal, who's the under secretary, was at our virtual conference on Tuesday. And we asked him... Let's talk about timing of a regulation. Because normally, if you go through a neg reg, that's going to be a year or more before it's implemented. Even if you do an early implementation. Public comment, you convene a negotiating panel, you have several rounds of negotiation, then you have an NPRM, comment, final rule. He said they're going to do it as quickly as possible, wouldn't commit to a timeframe.

First, let's talk about stakeholders. I don't want to get so granular that we try to figure out who all the stakeholders are, but would the stakeholders possibly be as broad as those who could be for loan forgiveness and those who would be against loan forgiveness, or potentially harmed in a legal sense by loan forgiveness? Could it be that broad, that you would just basically have a neg reg that is a policy debate? Do you see what I'm saying?

Jonathan Fansmith:

I know what you're saying. The problem is there are two answers here, right?

Justin Draeger:

Is this a hammer? Are you hammering out a regulation, or are you having a policy debate? You have people against loan forgiveness and you have people for loan forgiveness. And you're not actually hammering out any regulations, it's just a policy debate.

Jonathan Fansmith:

I sort of jumped in earlier and said there's two possible answers here, and I think who answers that question is the Department of Education. What do they want out of this process? Part of the whole negotiated rulemaking process lies very much in the hands of the department. Normal people would think, if you have a pre-desired outcome, they want to come to develop a forgiveness plan, that you would invite stakeholders that reflect shared interests; that a broad base loan forgiveness plan is in the public good and would bring people to the table who would work on the most constructive way to do that. It ignores the fact that one of the great tools that the Department of Education has is failure to get consensus, because then they get to write the language the way they want to rather than the negotiators put together.

So if you're thinking, based on the clues we have, that they want to do this very quickly, that they already know fundamentally what they want to do... They put a proposal out there. That's pretty clearly what they want to do. Then maybe you do have enough of a disagreement on the panel, including a few people who absolutely would not agree to what others would agree to. And you move on and you write a final reg that looks exactly the way you want to do it, solicit comments, and then implement. That would also probably be the fastest way to move the process, rather than having an earnest and spirited engaged debate among like-minded people trying to reach a common outcome.

Justin Draeger:

Do you even think, though, among those who would be pro forgiveness that they might not even reach consensus? Because think about the groups who are pro forgiveness. They might not even come to consensus on the amount of forgiveness. Because there are some who would be pro forgiveness that would want more forgiveness, they might want more loans who didn't qualify for forgiveness to qualify for forgiveness. Remember, there are a whole host of FFELP loans that didn't qualify at the outset, or loans that couldn't be consolidated. I could just see them failing on a lot of different fronts from both the pro and anti forgiveness groups. I could see this just failing from the outset and then the department writing the regulation they wanted to write from the get-go.

Jonathan Fansmith:

I mean, I certainly think that's possible. I do wonder, if you are an advocate for forgiveness and you have seen where the court went and you are invited to be part of the staple, if you might not be a little bit more willing to move-

Justin Draeger:

Go along.

Jonathan Fansmith:

Yeah, move away from universal forgiveness or even \$50,000. Because the shot at getting something done, even if it's just going to go right to the courts again, might make you a little bit more willing to compromise than other people who are staunchly opposed to the policy.

Justin Draeger:

Presumably no lawsuit can be filed until there's actual harm that can be quantified, which means you have to have a final rule. We have to go through the entire process. The final rule has to be issued before any harm could be calculated. But the same people who had standing in the last lawsuit would presumably... It's already been determined by the court that that same entity would have standing in the next lawsuit. Would they not?

Jonathan Fansmith:

That would be my assumption. There's some part of me that thinks, if the Supreme Court has established a precedent and the Department of Education is attempting to put forward a process that seems to violate standing of Supreme Court law, recently decided Supreme Court law, someone may challenge it on constitutional basis. But I don't know enough about standing and how the merits of standing on a constitutional challenge would go forward. I think generally you're right. I think we'd have to see a final rule for somebody to say, "Look, this will specifically harm me in this way, and therefore [inaudible 00:28:43] from the courts."

Justin Draeger:

All right. Okay. You mentioned the IDR plan. I don't think we want to go too deep into this, but Rachel, maybe you can give us just the high level highlights of the SAVE plan. That is basically the revised repay plan.

Rachel Rotunda:

Yes. This is the new income-driven repayment plan that was negotiated during the negotiated rulemaking sessions, I believe in fall of 2021. Which feels like it was not two years ago, but we're coming up on two years since this process started. We saw a proposed rule for this plan some months back, and what we're talking about now is the notice of the final rule. SAVE is really just a modification of the repay plan as opposed to a brand new plan on its own. There will still be four income-driven repayment plans, and this SAVE plan is one of them. And again, this is a modification of repay. ED has been using both names, SAVE and repay, interchangeably. But SAVE is probably what most folks saw in the announcement following the SCOTUS decision coming out of ED and the White House.

By law this new plan, due to master calendar rules, won't become fully effective until July 1st, 2024. But the department is going to early implement several provisions sooner rather than later, in hopes that they can get borrowers enrolled in this new plan prior to repayment resuming in October.

A few highlights, and I'll hit the things first that are going to become effective prior to July 1. These are the things that ED is going to early implement. First, there is an increase to the portion of a borrower's income that's protected from being factored into their monthly payment. That amount is going to increase from 150% of the federal poverty guidelines to 225%. 225% is an increase from where we saw ED when they were at the rulemaking table almost two years ago, fall of 2021. They were proposing 200%, so we've seen an additional bump there.

The new plan will also eliminate negative amortization, so any interest that's not covered by a borrower's monthly payment will be forgiven. The department has estimated that 70% of borrowers who were on an IDR plan prior to the payment pause will stand to benefit from this change. Pretty significant share there. And then the other thing that we'll see come into effect early is that married borrowers who file their taxes separately will no longer be required to include their spouse's income in the payment calculation under the SAVE plan. Those spouses also won't be included in family size.

There are a few other things that will be fully implemented next July, some additional benefits to this plan. One of the big things is that borrowers who only have undergraduate loans will repay 5% of their discretionary income, as compared to 10% under most of the current income driven plans. Borrowers with only graduate loans will continue to repay 10% of their discretionary income as they do now under most current plans. Then another big thing that we'll see included as part of this plan is that borrowers whose original principal balances were less than \$12,000, or under that threshold, will qualify for forgiveness after just 10 years of repayment. This shortening of the repayment term is definitely a really big deal, something that we don't see in the current plan.

In terms of what to expect, Tuesday when Under Secretary Kvaal is at our virtual conference, he shared that the application for the SAVE plan will be launching soon, but right now borrowers can enroll in the repay plan. And then once the SAVE plan becomes available, they'll be automatically transferred into it. That's the high points. There's a lot of details and more to come I think, but those hit the high points.

Justin Draeger:

Yeah. And people can check out more on our website. We have articles up that go into the SAVE plan. I'll just also note that this plan is going to be obviously a lot more generous, as you just covered, Rachel.

The department is estimating that this will ultimately be less expensive, and I think about a million more people will end up having a lower payment through this plan than they have today. Ultimately this will mean more people will have forgiveness. I don't have the exact numbers on how many, but as you talk about the Biden administration and pursuing debt forgiveness, a lot more people are qualifying for debt forgiveness through either PSLF, borrower defense claims. A lot more people will qualify for forgiveness through the SAVE plan, and now they're pursuing outright debt cancellation.

This may not be the preferred way, but I think one of the reasons why Republicans, and particularly Dr. Fox on the House Education and Workforce Committee, are really taking aim at this program in particular is it has the potential to provide a lot of debt forgiveness. It's just all on the backend, which doesn't do a whole lot for college access. But this is going to be a significant debt forgiveness program and nobody is challenging the legality of that pathway.

All right. The other big thing that the department announced, and we talked about this a little bit in our virtual conference, was the 12-month on-ramp, which is not the same as a 12-month, non-payment extension. Rachel, you want to talk about that?

Rachel Rotunda:

Yeah. The department has announced that they will be providing borrowers with, again, a 12-month on-ramp to return to repayment. This is going to be something that is automatically provided to borrowers, and it's basically a time during which repayment has restarted, interest will be accruing, but the most adverse punitive consequences that come with delinquency will be suspended. This will keep borrowers out of delinquency and default status. They won't be reported to credit bureaus or referred to debt collection agencies. It's really just meant, I think from the administration's perspective, to provide additional time for borrowers who might be struggling to begin getting back into the cadence of making those monthly payments.

But I do think the department, and certainly Under Secretary Kvaal on Tuesday, have been pretty clear that, excuse me, this is not an extension of the payment pause. Interest is going to start accruing, payments are due. This is really just meant to be a safety net to catch those most vulnerable borrowers during this time of transition.

Jonathan Fansmith:

Probably worth mentioning too, by law they can't extend the repayment pause, because that was part of the debt ceiling deal too.

Rachel Rotunda:

Yep.

Jonathan Fansmith:

Maybe why they're emphasizing that they don't see this as an extension of the repayment pause. Yeah.

Justin Draeger:

Repayment is officially beginning and we would, as schools of course, be encouraging people to start repayment, because interest will be accruing. However, if they aren't making payment, no negative consequences in terms of them being reported as delinquent will be taking place. For school CDR purposes, this means that people won't actually be defaulting until 2025, I think, until the earliest. Because we have a 12-month extension, that takes us to fall of 2024, plus another 270 days. We're well

into 2025 before we start to see people slip into default. The one accountability metric we do have on institutions, which hasn't been a great accountability metric, isn't really a good proxy for institutional quality, but that one metric is the one we have; is pushed out even further. As schools are thinking about managing this return to repayment and managing their institutional CDRs, that's what we're looking at right now.

Thanks everybody for listening to "Off the Cuff". It was so great to see so many of you in San Diego at our national conference. Thanks to all of you who came up and said you're enjoying the podcast and listening. It's great to see all of you in person, and we will talk to you again very soon.