NASFAA’s “Off the Cuff” Podcast – Episode 275 Transcript

OTC AskRegs Experts: Debriefing Student Debt Relief Neg Reg and Parent of Record for 2024-25 FAFSA

Allie Arcese:

Hey, everyone. Welcome to another episode of "Off the Cuff.” I'm Allie Arcese, NASFAA's Communications Director.

Jill Desjean:

I'm Jill Desjean with NASFAA's Policy Team.

David Tolman:

And I'm David Tolman with Training and Regulatory Assistance.

Allie Arcese:

We're coming to you today. We have just wrapped up, and I say we loosely, the first negotiated rulemaking session for debt relief, student loan debt relief. This is the next attempt from the Biden administration to bring about some form of loan cancellation for struggling borrowers, and before we started recording, we were just talking about just the neg reg process in general and how, Maria described in one of her articles this week, is notoriously tedious.

I was saying there's this one article from The Chronicle of Higher Education that was published a few years ago, more than a few, 2017. It feels like yesterday, but it's an entire article probably that is really just about how much neg reg sucks. The headline of the article is a quote from someone. It's "I can't overstate how deeply dull the process is," and it's one of my favorite articles that's ever been written because it's so relatable if you've ever sat through a negotiated rulemaking session as a negotiator or an observer or a reporter. It's just like, I felt that on a deep level when I read this article.

Jill Desjean:

I hope you'll share it. I would love to read it. Agreed, it is dull. I think a lot of it, because sometimes it gets spicy, sometimes you have people on different sides of things, but the problem is it's the structure. It's that people get their three minutes to talk and so it's a matter of how fired up somebody might be about something. They'll probably have to get in line between six other people to give their three minutes, and so by the time they have a chance to disagree, they've managed to calm down a little so you don't get a lot of it-

Allie Arcese:

There's a lot of talking, and I don't want to downplay it because they are talking about important issues and it's tough, but there's a lot of talking in circles and just back-to-back grandstanding. It sometimes feels like it veers away from the actual negotiating part of negotiated rulemaking. I remember someone used to tell a story, and it might've even been Joan way back, neg reg used to actually work and there was some story about pizza being ordered and people staying there all night and just hashing it out and actually coming to consensus whereas these days, I feel like consensus is few and far between.

Jill Desjean:

It is rare, yes.

Allie Arcese:

Yeah. I remember covering the borrower defense negotiated rulemaking in 2016. That's the other thing is so many of these are which iteration of neg reg was it?

Jill Desjean:

Didn't we do this already?

Allie Arcese:

Was it 2014, 2016, 2017, 2019? Which one is it, but it was just really tense. It's like you almost get sucked into a different world, especially when they decide to add extra days or extend the hours on the days and it can be really tense, but were either of you, Jill, were you watching it this week?

Jill Desjean:

Yeah.

Allie Arcese:

So we'll talk about neg reg a bit and then later on, we're going to get into some more FAFSA simplification news with David, and today, I believe we are talking about the 24-25 FAFSA parent of record. So that's where we're going in this episode, but let's go ahead and dive into neg reg because there's a lot to cover here. Fill us in, Jill on what's been happening this week.

Jill Desjean:

Sure. This was the first week of three total weeks of neg reg. Interesting in comparison to past years, we are talking only about student loan debt relief. So the, I don't know, the past quite a few years, I feel like that department has packed a ton of very different topics into one agenda and negotiators have three weeks of five days of negotiations and they have a lot to talk about, and there's often a lot of criticism that there simply isn't enough time to cover everything.

This is only two days, so it's three sessions of two days each, but it's devoted to just this one topic of student loan debt relief. So it's a nice break in some ways from having to jump from topic to topic. They're usually related in some way, affordability and student loans, but you're going from income driven repayment to PSLF to something else. So this one is nice in that it's a narrower scope.

Allie Arcese:

And it's a little bit less weedy and policy heavy the way that some of them are. Gainful employment can get really in the weeds, but this is almost more, or it's not entirely political because there is regulatory language to talk about, but in a lot of ways, it is a more political neg reg.

Jill Desjean:

Especially at this point, where there isn't regulatory language to deal with. People are really just talking in language everyone can understand, which is nice.

Allie Arcese:

And that's sometimes how it is in the first session every time because often, the department does not already come to the table with proposed regulatory language. The first one is just a discussion to lay the groundwork for where they're going, but this one stemmed from the Supreme Court striking down the Biden administration's plans to forgive student loan debt up to $20,000 in debt for borrowers within certain income thresholds.

Jill Desjean:

Yes. So this is-

Allie Arcese:

Sorry. That was more of a statement. I feel like it was supposed to be a question.

Jill Desjean:

This is in response to the Supreme Court decision. The departments took a handful of actions. They announced the release of the save repayment plan, the new IDR plan. They announced that on ramp to repayment where borrowers won't have negative items reported to credit agencies if they miss a payment during this first 12 months and they announced this negotiated will making, and so it's in response to the decision by the Supreme Court about broad scale cancellation, but the department was quick to stress the differences between what they're doing here and what the court struck down over the summer.

So they talked about, for one, how the original plan under the Biden administration relied on authority given to the secretary of education under the Heroes Act, and this is using completely different statutory authority. It's relying on authority that's part of the Higher Education Act, which allows the secretary to enforce pay, compromise, waive, or release loans. They also stressed that this time around, they are not looking at broad-based debt cancellation where they would wipe out debt entirely for some huge swath of borrowers like the plan that got struck down by the Supreme Court.

So instead, they're looking at more individual ways the secretary can issue waivers and the conditions under which they can do that. They're trying to identify groups of students who are somehow uniquely impacted by circumstances in their lives that impact their ability to repay their student loans and so the department said, sure, that might mean full cancellation for some people or for some groups of students, but it wouldn't look like what was proposed last year.

It'll be more targeted than just an income cap and everyone who makes less than this is going to get 10 or $20,000 of their debt forgiven, and the department just stressed they want a wide range of options. They don't have ideas right now. I'm sure they have ideas, but they didn't propose those ideas right now. They just said they just want to hear from everyone. They intentionally came to the negotiating table with no regulatory language, just five questions they wanted negotiators to discuss.

Which were really just getting at finding these pockets of students who have been really the most impacted by their student loan indebtedness and how to help them, and lastly, the department just made clear they're looking at ways to systemically address problems in the student loan system. So helping struggling borrowers, not just the people who are in repayment right now, but future borrowers. So that's where regulatory changes will do that versus the executive action from last year. That was a one-time thing.

It was going to relieve a bunch of debt for people who were in repayment, but some critics of that, including NASPA who didn't criticize the plan necessarily, but said, yes, but what about the people who are borrowing now? Won't we just face this problem down the road? So that's what regulatory action does as opposed to executive action, is it codifies whatever they come up with in the regs. Not to say the regs can't change later, but there has to be a process to do that. So it would protect both current borrowers for repaying and future borrowers.

Allie Arcese:

I have a couple of questions there. I'm going to go rogue from our agenda, and sorry, this is what you get when you have a former journalist hosting the podcast. So I'm wondering, coming out and saying there's no broad scale loan forgiveness, that's a big statement to make right out the gate because I think some people were expecting that they were going to target widespread loan forgiveness, but do you think that there's political strategy there because I think it's fair to assume that at the end of this, it's going to get challenged in some way? So is that maybe a political strategy to try and protect whatever they do by having it being even more targeted than just around income parameters?

Jill Desjean:

Yeah, I definitely think there probably is some political strategy involved there. It's really not going to help the department to have yet another plan struck down in the courts, and they mentioned in the negotiations for sure yesterday, both negotiators and the department talked about just what's practical and what's going to stick, something that's going to be able to be defended in the court. So yeah, I think you're right.

Allie Arcese:

And then you mentioned that they're also looking at systemic changes to the entire student loan repayment system and how to help future borrowers. So does that mean that we might also get into repayment options and changes there or tweaks to those things? Is that even possible through this vehicle?

Jill Desjean:

So I think the department was clear that they're not going to revisit things like public service loan forgiveness, IDR plans, borrowed offense repayment. They've already covered that in very recent neg regs. They don't want to revisit those regs, but they did mention something they might be looking at is increasing uptake rates for people to be using those different forms of relief. How can they do better outreach? How can they automate? That was a big thing that came up a lot during the discussions, not just creating new ways, but also using the things that are already in place and just making sure that people know about them and are taking advantage of them.

Allie Arcese:

And so what else did they discuss over the last two days, if not broad scale loan forgiveness?

Jill Desjean:

So on the first day on Tuesday, they focused on two things, how to address growing balances due to accrued and capitalized interest, as well as how the department could do a better job of letting borrowers know they qualify for things like IDR plans, PSLF, what we just discussed, acknowledging there's a lot of debt relief out there already that borrowers don't take advantage of, and so negotiators there really focused their comments on the need for automation. Several had specific instances of where even telling a student they're actually eligible for something and telling them how to apply.

Not just publicizing, hey, this is a thing, but you qualify for this thing and this is the link to follow to apply. They said even in those cases, you see instances where you don't get a really strong response, and so really focused on automation. They also stressed the need for, again, like I said before, just systemic reform, not just fixing things for the people in trouble now, but for future borrowers as well, and that's what the department agreed they're trying to do here.

And then on day two, pardon me, they focused on addressing the challenges faced by borrowers who have older loans, noting that a lot of the improvements that the department has made to the student loan programs don't always benefit those people who have been in repayment for a long time. So one example of that is the elimination of non-statutory interest capitalization. So for new borrowers, they won't see that capitalization happening. They won't see their balances growing, growing, growing, but for someone who's been in repayment for 20 years, they already had all that interest capitalization happen.

So how to help those borrowers, those are probably the ones who are struggling the most and how to get at them. They also talked about loan cancellation in the context of students who attended programs that now are failing the gainful employment or financial transparency value metrics. So the idea that possibly, even if you went to that program 10 years ago and borrowed for it, the issues that made them fail GE or financial value transparency could have been in place back then 10 years ago, and so students are being warned now, starting in 2026, this is a program that might not deliver returns to be able to repay your debt.

But what about the people who borrowed 10 years ago to go to that program when they didn't get that warning? So they talked about that a bit and they wrapped up just discussing broadly what sorts of hardships may exist in a borrower's life that are separate from their student loan repayments, but impact their ability to make student loan repayments. So things like chronic illness, childcare or elder care responsibilities, things that are a big financial drain on a family and maybe their student loan payment "looks affordable" based on their income, but when you factor in these other economic hardships, it becomes impossible for them to afford their student loan payments.

Allie Arcese:

The concept of the borrowers with older loans is interesting and that's where some of these discussions get really murky because it's like where do you define what qualifies as an older loan? How far back are you looking, but you have to have those conversations because otherwise, it's just arbitrary, and Maria had some of this in her article yesterday that one point they were looking at was when the FFEL Program ended, so what, 2010? Yeah. We'll see where they go.

Jill Desjean:

Because with those older loans too, this came up a good deal yesterday, I think yesterday, just record keeping and the amount of data that's available is pretty lacking. People talked about having some, when they look up their loans on NSLDS, there's this phantom loan for $10,000 even though their loans are paid off. As servicers change and loans move from one to the other as people consolidate their loans, the more time that passes, the harder it is to be able to track down just-

Allie Arcese:

Well, and just changes in advancements in the quality of digital record keeping.

Jill Desjean:

Sure, yeah. If you're talking about a loan that's 20 or 30 years old, there might've been paper records being transferred.

Allie Arcese:

Yeah. There might not be a digital record.

Jill Desjean:

It'll be really hard to identify, I guess, those people with the older loans because of just gaps in data.

Allie Arcese:

And we talked about how this is a tense topic. It can be controversial, it can be political, but overall, what was the tone of the negotiations this week?

Jill Desjean:

I would say broadly, the group of negotiators there is in favor of doing something, making some reforms to the loan programs. They all have different perspectives, but they all want to see some relief for struggling borrowers and they're all coming from their own area of expertise with being able to identify which borrowers those are who are struggling the most. There were not a lot of concrete ideas shared, which isn't surprising. No one had a plan.

The questions that the department asked the negotiators to address were about really just broadly identifying who are these people, who is struggling to repay loans and why, but not really getting into those specifics of how, and I definitely heard from negotiators that they were concerned and a little frustrated. You heard a couple of times during the days, is this what you want?

I feel like I'm saying things, but I'm not sure if they're the things the department needs to hear. What are you doing with this information, and the department just kept coming back and reassuring and saying, this is exactly what we want to hear. We have a lot of work to do in the next month, but this is the feedback we need to hear to be able to develop regulatory language to bring back to you in November.

Allie Arcese:

And it's interesting that you say that there was generally agreement that they're in favor of making some changes because there are definitely people out there who just philosophically are very against the idea of student loan forgiveness. So maybe there's some hope there that they'll get through this process with some form of consensus, but it sounds like something that we do a lot here at NASFAA when we make changes or develop new products or services. The beginning is always ideating, which can be really frustrating because it's just a brain dump and you're not supposed to shoot ideas down, and it doesn't mean that just because you throw something out there, it's going to happen. It's just dump everything out.

Jill Desjean:

Yeah. It depends on the kind of person you are, but some people love that stage of the process. I'm more of a details person and I'm a how. I'm like, just tell me what and then I'll figure out how. So that can be challenging if-

Allie Arcese:

I'm a clarifier and I forget the name of the, I think it's called foresight was where you get all these different types. I think Karen is also a clarifier. So I feel like when we're in meetings together, we're like, well, when you say this, what exactly do you mean? Can you elaborate on that a little bit more, which can sometimes derail conversations, but that's why we're not in neg reg.

Jill Desjean:

You need a clarifier on the team.

Allie Arcese:

So we're picking this up again next month in November. What's going on?

Jill Desjean:

Yeah. So November 6th, 7th, the group will meet again. The department will send some, they'll write regulatory texts over the next couple of weeks. They will send negotiators that text a week before. They usually also post it, maybe not right when negotiators get it, but a few days before negotiations begin, and then they will start hammering out the details and just making that regulatory language a little more precise, making sure they included everything that they talked about during the first session. Then they meet for a third time in early December and that's where they really just fine tune the regulatory language, finalize it, and wrap up with a consensus vote.

Allie Arcese:

We'll see.

Jill Desjean:

We'll see. Yeah. It's a notoriously tedious process, Allie.

Allie Arcese:

That it is. Well, thanks, Jill. We'll look forward to the next recap that we have after this next session. All right. We are going to turn to David Tolman from our training and regulatory assistance team to talk about today's hot topic in FAFSA simplification because who wants to talk about anything else, and today, we're going to dive into the 24-25 FAFSA parent of record. Why is this a hot topic right now?

David Tolman:

Well, I think it's a hot topic because by now in a typical year, the FAFSA will be available. So we're getting a lot of questions. So both those who are helping students or parents even at the high school level are trying to find out what are the new rules, how can we best get prepared? So we talked a lot about that last month. We're going to review a little bit today and we're going to do a deeper dive in some areas about just identifying who the parent is and how that information is reported. It's a segment I like to call Fun with FAFSA.

Allie Arcese:

Other F words we could use with FAFSA.

David Tolman:

Maybe Maria could get that Wheel of Fortune yell-out, Fun with FAFSA.

Allie Arcese:

Maybe like frenzy might be more appropriate.

David Tolman:

Frenzy with FAFSA, but we just don't want it to be deeply dull or notoriously tedious.

Allie Arcese:

I think that's pretty much guaranteed. It's not dull or tedious. It's definitely keeping everyone on their toes. So where do you want to start with all this?

David Tolman:

Okay. Well, let's review the various definitions of a parent, and it's going to depend on marital status and living arrangements and finances. So the easiest case, both parents are married. In that case, both are contributors. So contributors is the word for which FAFSA or which parent is going to be providing information on the FAFSA. They're both married, they're both contributors. Parents are not married, but they live together, they are both contributors.

So that does happen. The next one, then it starts to get a little more difficult. It's a single parent because of death. The parent has not remarried. That one, the living parent is the contributor. All right. So if parents are not married and they don't live together such as separation, divorce, or the parents never married in the first place and they're not living together, then the contributor is going to depend. That's our famous it depends answer.

Allie Arcese:

Everyone's favorite.

David Tolman:

We'll talk about that, but this is where things differ.

Allie Arcese:

The first couple seemed pretty straightforward and it gets a little more complicated. From last month, this is where the criteria differ from prior years. Is that right?

David Tolman:

Yeah, this is where it differs. We're talking about the parents are divorced or separated or they never married and they're not living together. It used to be based on which parent the student's living with. That's gone. It's now which parent provided more financial support over the 12-month period prior to the time when the FAFSA is being submitted, and this could be different from the parent the student lives with. They could live with one parent, but the other parent's providing all the financial support. Well then, you go to that other parent.

Then you get into, well, that should answer most, but there's going to be some situations if neither parent provided more support in the preceding 12 months. So probably the most obvious example is the student's financially independent. They're still dependent on their parents for FAFSA purposes or they're supported by somebody other than a parent, or in the rare case, parents claim an equal amount of support. If that is the case, then you go to the last question, which is the parent with the greater amount of income or assets. We're still waiting some pending clarifying information from the Department of Education because of that or, which we talked about last time.

Once the parent of record is identified using that criteria, then you ask, all right, has that parent remarried, and if yes, the parent and then this new stepparent are contributors, or if the parent of record has not remarried, then that parent is the contributor, and it's important to point out the stepparent's finances are relevant only when the parent of record is identified, and in our Slack community channel, we received a question from Beck from the last time we did this, and Beck asked can we get some more information on stepparents as contributors, and okay, Beck, let's talk some more about stepparents.

Allie Arcese:

Yeah. Give us an example.

David Tolman:

Okay. So as an example, the student's parents are divorced. The student lives with dad, but the mother has remarried. So the student first asks, okay, which parent, mom or dad, provides more financial support to me over the last 12 months? The fact that the student lives with the father doesn't matter. You just look at the financial support the dad provides to the student. Then look at the mom in this example.

What financial support has mom provided to the student? At this point, look only at the financial support the mom provides. Ignore the stepparent for now. So compare mom's financial support to dad's financial support, and if the student determines, okay, over the last 12 months, mom has provided more support, then mom becomes the parent of record. When completing the FAFSA, now the stepparent's income and assets are relevant. Both mom and mom's spouse are now FAFSA contributors.

And then once the parent of record is identified, the family size question is answered based on the situation with that parent. So mom, mom's new spouse, and initially, the dependents on the tax return, and it's far to note that dependents now are going to come from the federal tax information, or FTI, that's transferred during the Future Act Direct Data Exchange or FA-DDX. So either mom or the mom's spouse can be the past contributor if they were married in 2022 and they filed jointly.

Allie Arcese:

What if the mom and her spouse were not married in 2022?

David Tolman:

Okay. And the reason we're talking about 2022 is that's the base year. So if they-

Allie Arcese:

Prior-prior year.

David Tolman:

Yeah, prior-prior, and if the mom and the mom's spouse status has changed since then, so they've gotten married, then they can't use that DDX. Each is going to be required to manually enter their tax information on the FAFSA as separate contributors, and then family size will be determined manually as well. So at this point, let's switch to talking about family size, and Beck, I hope this gave you some more information on situations involving stepparents, but okay, let's talk a bit about family size. Initially, family size is based on the dependents claimed on the tax return when the information is transferred using the FA-DDX.

Allie Arcese:

So you said initially. That information could be old. Can family size be updated when completing the FAFSA?

David Tolman:

Yeah, the contributor can update the family size. It could be old, you're right, but they may need to reference their copies of the tax return to determine how many dependents there were in 2022 because dependents are part of tax information, all FTI, all that federal tax information that's transferred over is masked. So applicants won't see what the initial family size is in able to make the comparison, but if they know, okay, these are the dependents, it matches the family size, nothing more to do, but if they need to, they'll be given the opportunity to enter the family size and it has to be based on this criteria.

So for the dependent students, and we're talking really mainly about dependents today, it's the parent, the parent's spouse using that decision line we referred to earlier, the student, and then the parents' dependent children, even if they live apart from the parent because of college enrollment, and then other people, if they live with the parent and the parent will provide more than half of their support between July 1st and June 30th of the award year covered by the FAFSA. So that would be July 1st, 2024 to June 30th, 2025 for the 24-25 award year. Now the criteria are intentionally worded that way to try and mimic how dependents are determined for tax filing purposes.

Allie Arcese:

Okay. Can we go into a few what if situations?

David Tolman:

Yeah. Where do you want to start?

Allie Arcese:

Okay. What if the student's sibling receives more than half of their financial support from the parent, attends college, but is independent for the purposes of completing their own FAFSA? Can that sibling be included in the family size?

David Tolman:

Yes. Yes. So even though the sibling is independent for the purposes of filing their own FAFSA, so for example, they're over 24 years old, that sibling can be included in the family size of the student because the parents provide more than half of the support for their child.

Allie Arcese:

That's interesting. What if the parent, the student, or the spouse is pregnant when completing the FAFSA? Can the unborn child be included in the family size?

David Tolman:

So this is a difference. The answer to that is no, and if there's interest, we can talk about it in more detail next month, but under the family size guidance, which aligns with how dependents are determined for tax filing purposes, an unborn child cannot be included in family size.

Allie Arcese:

I definitely have some follow-up questions there that we can talk about next month. Here's another one. Can a financial aid administrator use professional judgment to include the unborn child?

David Tolman:

Yeah. The Department of Education has said no to that one, and remember, the definition of family size is coming from statute, which is passed by Congress, and the department cannot allow anything that's contrary to the statute. So in wording family size the way it is and tying it to the tax return, the department has said that using professional judgment to add an unborn child to the family size would be considered circumventing statute.

Now we can talk about other adjustments that could be made to income and other things using professional judgment, but you can't directly adjust the family size, but there's a few situations. If the student's later selected for verification and by that time, the student or the child is born, then that child can be included, or if the birth of the child changes a dependent student's status to independent, then that has to be updated, their dependency status, but it's important to note the treatment of unborn children is different than it was in prior years and with all these, we can go in many different directions.

Allie Arcese:

You answered some of my questions. I was going to ask, does it change things if the child is born during that time? Well, this might be a good place for us to stop and pick up next month. There's never any shortage of discussion points around FAFSA simplification. So we'll have plenty for you guys next time.

David Tolman:

More Fun with FAFSA.

Allie Arcese:

Fun.

David Tolman:

I look forward to it.

Allie Arcese:

So fun. All right. Thank you, everyone, for joining us for another episode of "Off the Cuff.” Be sure to subscribe, tell a friend, and we'll talk to you again soon.