

NASFAA's "Off the Cuff" Podcast – Episode 248 Transcript

OTC AskRegs Experts: The National Emergency's Impact on Financial Aid and Upcoming Changes to Professional Judgment

Justin Draeger:

Hey everybody, welcome to another edition of "Off the Cuff." This is our holiday edition. I'm Justin Draeger.

Jill Desjean:

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

David Tolman:

I'm David Tolman from Training and Regulatory Assistance.

Maria Carrasco:

And I'm Maria Carrasco from NASFAA's Communications Team.

Justin Draeger:

Welcome everybody. Like I said, this is our holiday edition. I wonder how many people are still -- have been dismissed from campus? Jill, David, you'll remember working on campus and things were shutting down right now. Although aid administrators often will work up until sometimes right at the holidays, but I do wonder how many people are like gone, they'll be back in January and are still going to listen to Off the Cuff. That's the type of listeners we have. Maria, do you agree with me there?

Maria Carrasco:

Yeah. 100%.

Justin Draeger:

Okay. All right. Well, good answer. All right, let's jump in. Last week we had an episode that was largely about the GAO report, and it elicited a lot of response from NASFAA members and our OTC community. Why don't you catch us up on some of the feedback that we've got?

Maria Carrasco:

Yeah. One member said, I'm so glad that y'all talked about software providers and that being a roadblock to maintain compliance and accountability in this area. I work at a small rural community college and we do not have a huge team of programmers who can customize the software to our liking.

Justin Draeger:

All right, yep. That was one of the reasons why the GAO cited that some aid offers didn't meet some of those standards was software limitations. What else?

Maria Carrasco:

Another member said, Justin mentioned competition being a reason why some schools don't follow suggested best practices for aid offers and bristled at it. Problem is that campus politics is what it is, and at most schools we are not the ones who are going to win that fight.

Justin Draeger:

And when he says we, clearly this person's talking about financial aid offices. Couldn't agree more. Competition was one of the other reasons, GAO cited why sometimes aid offers are not quite up to standard. That's one of the reasons why we helped form a task force that was made up not just of financial aid and admissions, but other associations that represent college presidents and system heads. Ultimately of the three reasons, resources, software limitations, and competition, it requires presidential buy in, so we cannot be fighting this fight alone. Okay, what else Maria?

Maria Carrasco:

Another member said, I'm curious, do others find the concept of net price particularly meaningful for students? I find that our students have no idea what that even means, and it just ends up being one more piece of financial aid jargon.

Justin Draeger:

Yeah, net price is not a term that would come naturally to most students. Financial aid's always been sort of partially making this easier to understand for students and families, and partially educating them on the financial aid process. I don't know that we've got that quite right. I certainly am not 100% convinced net price is the right term. It is the one that we as an industry have sort of landed on.

At one point last week I also lamented specifically about the finding that some schools were under-calculating net price. And a few schools also pointed out that much of that may be a function of schools really focusing on net direct expenses as opposed to the whole net price. This one comment particularly came from a community college that said, this is what our students want. They want to know how much they owe the school. So anyway, any other comments, Maria?

Maria Carrasco:

Yeah, another commenter said that different sectors need different aid offers. It feels like at a community college, the students don't pay attention to any disclosures or accountability measures, and if they happen to look, none of them make sense to them no matter what we do to break it down when they look at it. We are trying so hard to educate them about all this, but we are never going to accomplish a 100% understanding among all of our students.

Justin Draeger:

This is sort of trying to look at the whole of the community, and a rising tide will lift all ships. How do we get everybody to just pay a little bit more attention and presidents to allocate a little more resource to this area? All right Maria, let's do one more.

Maria Carrasco:

As the consumer testing NASFAA did years ago demonstrated, none of these aid offers really worked well. And if the GAO poked a little deeper, they probably would've found that many institutions are supplementing what's provided on paper with digital information and tools. If you provide an eight-page

award letter packet to make sure it's complete, people will get lost. But one page is for most cases, not enough information.

Justin Draeger:

It's one of our outstanding questions that we have for the GAO that we are having a debrief with hopefully in January, but it's what was provided. If you've provided just the first page, everybody is really fixated on this aid offer as if it's a one page thing, but often it's multiple pages, and you're trying to figure out what are the most critical elements to be on page one, and then supplementing with a lot of other information. So we'll be digging into all of that. Thank you all for your comments and sending them in. We appreciate your candor and your perspective on the GAO report and how we as an industry should be focusing on these really sometimes difficult concepts.

All right. Let's bring Jill into the conversation. Jill there's been a lot of talk of potential first veto by President Biden related to rescinding the national emergency that's been in place since all the way back to the spring of 2020 once the Republicans take control of the house in January. Let's talk a little about what that would mean for financial aid.

Jill Desjean:

Sure, yeah. So there is talk that the House will bring a vote to the floor lifting the national emergency after they assume the majority in January of 2023. And this issue hasn't yet been taken up by the current Democrat controlled house, but back in March and again in November, Democrats supported it in a Senate vote. There were 12 Democrats supporting it back in November. So there is support on both sides in the Senate at least. So it's got a solid chance of passing both chambers once the house flips, and then of course the president would be faced with the decision as to whether to veto that.

Justin Draeger:

Yeah, so I guess the question is would the president or has the administration signaled whether they would veto the resolution? Because we are getting conflicting messages given that the president has said repeatedly that the pandemic is over.

Jill Desjean:

The president needs the national emergency to stay in place. In part because it forms the legal basis for broad scale loan cancellation that is currently on hold awaiting a ruling from the Supreme Court, where oral arguments are not set to be heard until February.

And that's because the president used the Heroes Act as justification for its authority to grant this broad scale cancellation. And what the Heroes Act does is it permits the Secretary of Education to waive or modify statutory or regulatory provisions when necessary in connection with a war or other military operation, or notably, a national emergency. So if the national emergency ends, then the administration doesn't have its legal basis for the cancellation plan.

Justin Draeger:

All right. So this might be an awfully long list, Jill, but let's say that Congress does end the national emergency. What would be the impact to federal student aid?

Jill Desjean:

So it's not just loan cancellation that would be impacted. There are still a lot of pandemic related flexibilities in place that ED used the Heroes Act to establish. And so an end to the national emergency will at least start the clock on the expiration on those flexibilities, even if they don't literally end the day the national emergency is lifted.

So the Department of Ed kind of worked into its waivers and flexibilities some lead time so that when the emergency ends school still can use those flexibilities for a little bit longer. So for instance, the payment pause and interest moratorium are in place because of the national emergency. If the emergency ended, the administration couldn't put another pause into place, but the current pause would extend until its current expiration date. And so right now that's set for either 60 days after the Supreme Court rules on the issue or 60 days after June 30th.

Justin Draeger:

And then we have a bunch of other flexibilities too, right, related to campus-based aid and verification?

Jill Desjean:

Yes, that's right. So some are tied to the end of the pandemic in that they are in place through the end of the payment period that begins after the date on which national emergency is rescinded. So again, if the emergency ended today, those flexibilities would stay in place through the end of your school's next payment period. And this is a non-exhaustive list, but it includes things like the automatic waiver of the work study, community service, the verification waivers. There are some documentation of flexibilities, some signature flexibilities, some flexibilities around verification of non-filing. All of those things would be in place through the end of the payment period that begins after the national emergency ends.

Justin Draeger:

And then to make this even more complicated, there are other flexibilities that end when the current term ends. Is that right?

Jill Desjean:

That's right. Yeah. So the end of the term when the national emergency ends. So again, if the national emergency ended today, you would have these flexibilities through the end of the term that you were currently in.

And so that includes, again, a non-exhaustive list, but the transfer 100% of your work study funding to SEOG, the ability to make FSEOG emergency grants without using the regular FSEOG awarding rules, and that provision that any emergency aid that's received from a federal or a state source is not considered estimated financial aid or income for calculating a family's EFC. Those things would end at the end of the payment period that the national emergency ended.

Justin Draeger:

Okay. So let me try to give two examples here, okay? Based on what we just talked about. One is the automatic waiver for federal work study community service. If Congress were to come back and in January end the national emergency, the Federal Work Study Waiver community requirement waiver would stay in effect through the next payment period or the next enrollment period beyond spring then, is that right?

Jill Desjean:

That's right, yeah. Assuming if your spring term was, I mean January is a little... I guess let's say it's like January 20th, just so that.

Justin Draeger:

Yeah.

Jill Desjean:

Your spring term has started -- you're a traditional sort of semester school -- your spring term has started, the waiver is in place through the end of the spring and then also through the end of your next payment period. So if you had a summer term, it'd be through the end of summer. If you didn't have a summer, you just had to follow be through the end of next fall.

Justin Draeger:

And that would be different if Congress passed on January 20th, the end of the national emergency and it wasn't vetoed. That would be different then for the 100% federal work study allocation to FSEOG waiver, that would only exist through that spring term?

Jill Desjean:

Exactly, exactly.

Justin Draeger:

Okay. So lots of different dates here, people will have to pay attention. We've got this all listed on our website, but I think there's also been a confusion, Jill, about different administrative actions and what is related to the national emergency and what's not. Can you help us kind of figure this out, what's related to the national emergency and what's not right now?

Jill Desjean:

Yeah, it is confusing. The administration's been really busy in the student aid area, and so a lot of the things that they've done, they've cited the pandemic as the reason for doing them, but not everything. So something new that isn't pandemic related is the one-time income-driven repayment payment count adjustments. This is action the department is taking without need for borrowers to do anything. So there's no real deadline, there's no expiration, and there's no link to the end of the pandemic.

The department just identified failures in the system as far as tracking payments toward IDR, and is correcting them by making adjustments to payment accounts over the next year or so, just in accordance with the scheduled they've established, so they're not reliant on the pandemic or national emergency end date for anything to happen or not happen with respect to those recoups.

Justin Draeger:

Okay. So IDR, not related. What about PSLF?

Jill Desjean:

Kind of. That one's been really complicated. So there were these temporary waivers that expired at the end of October, October 31st of this year. They had been in place for exactly one year, and they were tied to the national emergency in that the administration used the pandemic as justification to put these waivers into place. The credit for payments made pre-consolidation, credits for months not paid in full

or paid late, payments made under the wrong plan. All of those flexibilities that the department used to let those count towards your 120 qualifying payments, ED used its Heroes Act authority to grant those waivers based on the national emergency. It didn't necessarily tie the expiration of those waivers though to the pandemic, they just sort of picked a year. They said, okay, from October of 2021 through October of 2022 because of the national emergency, we're going to extend these waivers. But that has already ended, the authority has already expired on that, ended October 31st, the waivers are not in place anymore. So the national emergency wouldn't have an impact on that because they're not around anymore.

Justin Draeger:

And I imagine you said partially because we are expecting several of those provisions and the temporary PSLF waiver to become permanent in July?

Jill Desjean:

Yes. That's where things get really tricky. So the department held negotiated rulemaking last year to make changes, permanent changes, in the regulations to PSLF, many of which are things that were in this temporary waiver. So the temporary waiver was in place through October 31st, are not right now, but then most of those provisions actually become effective again on July 1st. Again, not tied to the national emergency, but because permanent regulatory changes were made through negotiated rule making.

Justin Draeger:

And this gets even more complicated because sometimes the talking points or the PR talking points may be very national emergency related in justification, but that's not necessarily the legal basis. So people can be forgiven for trying to figure out and decipher what is actually tied legally to the national emergency and what isn't. But Jill we'll, I assume you and the policy team will be watching very closely as we get into this next Congress to see if such legislation declaring the national emergency is over, is introduced, passed, and potentially vetoed by the president. And people can stay tuned to you and today's news going forward.

Jill Desjean:

Yeah, we'll be watching for that, and TRA and David's team will have a lot of documents to update once the national emergency ends.

Justin Draeger:

I think that was Jill's way of saying happy holidays, David.

David Tolman:

Yeah, thank you Jill.

Justin Draeger:

Last month, David, we talked about cost of attendance changes that came from the FAFSA Simplification Act, and at that time you promised we'd also talk about some of the PJ changes that came from the FAFSA Simplification Act. So PJ is changing, and is that the topic we're going to talk about today?

David Tolman:

Yes. We are talking about professional judgment, and we could probably talk about different topics in the FAFSA Simplification Act for the next 12 months, but we're going to hit the highlights today. Professional judgment, just to kind of define what it is, and it might, this isn't entirely new news, but some listeners it might be, it's come out in the last couple months. But professional judgment is a departure from the standard process when an aid applicant experiences special circumstances, unusual circumstances or both, and then the financial aid administrator based on those circumstances determines it's appropriate to make adjustments to better reflect what the student or the student's family is experiencing.

And it's generally limited to these areas, professional judgment. Data that's used to calculate the expected family contribution, soon to be the Student Aid Index or SAI, components of the cost of attendance, overriding a student's dependency status, and denying or reducing eligibility for direct loans.

Justin Draeger:

Okay. Everything you just said, David, exists in the current professional judgment paradigm, they don't necessarily reflect changes from the FAFSA Simplification Act, we'll get into that. But as we're talking about just sort of the paradigm of PJ, you didn't mention satisfactory academic progress overrides, and I'm assuming that that was intentional.

David Tolman:

Yeah, satisfactory academic progress involves many aspects that are similar to a professional judgment, such as making decisions on a case by case basis, having documentation and reasonable determinations. But waiving or granting an appeal is not professional judgment. And the importance of this distinction is the FAFSA Simplification Act, which adds criteria around professional judgment, particularly special circumstances and unusual circumstances.

Justin Draeger:

Okay, so special circumstances and unusual circumstances are, at least in the past, have always been used interchangeably. Is there now a difference that we need to pay attention to?

David Tolman:

Yeah, there is, and this comes again directly from statute. Special circumstances, those are the more typical circumstances that reflect financial aid changes that an applicant or the family experiences, and departs from what was reported on the FAFSA.

For example, a financial aid administrator might adjust student or parent AGI due to loss of a job or change to a job with lower income, or make adjustments to the cost of attendance due to high medical costs that the student or family is experiencing. Those are examples of professional judgment, but more specifically special circumstances, which is different from unusual circumstances. And those are circumstances that might result in a dependency override, such as a complete estrangement of the relationship between the student and the parents.

Justin Draeger:

Okay. So we are distinguishing between special circumstances and unusual circumstances for a reason that we'll get into with the changes in law. But maybe it's easier if we start, David, with what won't change. So based on what we do now, what won't be changing going forward?

David Tolman:

Okay so as always, decisions involving either special or unusual circumstances, they need to be made on a case by case basis. You can't say, okay, we're going to make a decision based on everybody who's in this major because they're experiencing this cost. That needs to be addressed in policies. Case by case decision making is still a required component of professional judgment. Having supporting documentation and continuing reasons for professional judgment decision are still allowed. I think the department is re-emphasizing this because I think institutions may have forgotten. But you make an adjustment to a parent's AGI because of a loss of the job for one year, that doesn't prevent the financial aid administrator from making a similar adjustment for the following year, however long it takes for that AGI to catch up. That's permissible.

Clarified that homeless youth or youth who are at risk of being homeless, making that determination is not professional judgment. It has not been, it's also not an unusual circumstance. And adding an allowable cost of attendance component beyond the standard tuition fees, books and supplies and so forth, that is not exercising professional judgment.

Justin Draeger:

And so that's not, those are the things that aren't changing. On that last one you just mentioned David though, many, many FAAs I think sometimes get confused and think that adding dependent care costs might be done only by professional judgment. But we're saying here that that's not the case.

David Tolman:

That's right. So there's a lot of standard components that are allowed by statute, but only for students who actually incur the expenses. But when a student incurs it and you add it into the cost of attendance, that's not considered a special circumstance. So for example, we talked about dependent care, but study abroad costs are listed in there, disability expenses, professional licensure or credential, those are all things that in statute are allowable and do not require professional judgment to add.

Justin Draeger:

So what then would be a PJ adjustment to a student's COA for special circumstances? Can we run through that list?

David Tolman:

Yeah, so it's where the school departs from its policy. For example, using cost of attendance. If you have a standard amount, for example, that you're using for disability expenses. If you depart from that, that would be considered professional judgment. So it's important that financial aid offices have a policy concerning professional judgment, but also particularly cost of attendance that is standard. It doesn't require case by case consideration for these other expenses.

So dependent care, for example, you've got standard, but maybe there is a child who needs special attention during dependent care that costs more, and it's beyond what is in your standard cost of attendance. Making that decision to adjust the cost of attendance beyond what is the standard amount

for dependent care, that's PJ. And case by case, documented, those are all elements of PJ that have not changed.

Justin Draeger:

Yeah, so they still have to be done on a case by case, they still have to collect documentation. On that front, does documentation, must it always be written? Does it have to be a signed document?

David Tolman:

Yeah, simply no. And that's because it's a case by case decision, and documentation to support a PJ decision could be as simple as the notes a financial aid administrator made during a visit or phone call with the student.

There's intentionally a lot of flexibility with documentation on PJ. So the key is determining what is reasonable to document considering the student's circumstances. So sometimes imposing the collection of signed statements from third parties might add unnecessary burden to a student who's already experiencing a lot and is visiting you and you see that you're going to approve it, they just want to go on and pursue their higher education. So the flexibility with documentation's always been there, but sometimes those school practices over years get mistaken for federal requirements, and documentation's just one area where there aren't stringent requirements. Just, the importance is doing what is reasonable given the student's situation.

Justin Draeger:

Yeah, that's probably why we see the department a lot of times repeat guidance previously. We sometimes mistakenly think it's new, but it's not, they're just sort of reiterating the flexibilities that financial aid administrators have.

Let's turn our attention for just a minute to the things in the FAFSA Simplification Act though. What are some of the changes made by that law that'll be going into effect?

David Tolman:

So one that schools need to be prepared for, and again, this starts with a 2023-24 award year, and some students may already be submitting appeals for that. So all professional judgment requests, special circumstance or unusual circumstance, appeals have to be considered. There's no wholesale denial. You can't have a policy of saying, you know what, we don't make any changes to what's reported on the FAFSA. That can't be done. You have to consider special circumstances that might impact either the cost of attendance or the EFC. So a school cannot have a policy that says, we will make changes to the EFC, but we're not going to make changes to the cost of attendance.

You can't have that policy either. You have to allow for either one, depending on the circumstances. There's some consumer information requirements that informing students that they can pursue these adjustments based on their special circumstances or unusual circumstances. Schools can accept a dependency override made at another institution, that's not new. But that decision could have been made in a prior award year, it doesn't have to be the current award year. So those have all changed.

Justin Draeger:

Things are changing with dependency overrides as well, or as we've talked about, unusual circumstances. Can you give us a sense of those changes?

David Tolman:

Yeah, they are changing, and we will get into that topic in the next podcast. There's not enough time to do full training on all these topics, but institutions need to know this. For the 2023-24 award year, students must follow the school's published procedures on submitting an appeal for dependency status determination based on unusual circumstances.

So that means, again, school's going to have to have a policy on it, and publish to students how they can submit a request for what we call dependency override, now officially called an unusual circumstance appeal. And then if a school determines the student is considered independent, then for all following award years, it must presume that student remains independent, at least at the school that's making the decision, barring any conflicting information or the student coming forward and saying, "You know what? I've reconciled with my parents. I'm back at home, they're supporting me." Barring those kinds of things, the student then becomes independent for each subsequent award year. But starting in the 2024-25 cycle on the FAFSA, it's going to allow students to indicate on the form that they have an unusual circumstance, and then it will direct them down a different logic path without parent information, based on how they report that in 2024-25. So that gets into some details and we'll save that for next month's topic.

Justin Draeger:

Yeah, to recap a couple things you just said though, David, that'll be important. Schools cannot have a policy of not doing PJs, and students will be able to indicate on a future FAFSA that they have an unusual circumstance, and the school will have to consider if the student submits for a dependency override, the school will have to have a process to actually consider that dependency override for each one that comes through.

David Tolman:

That's right. And they'll have to notify the student about the outcome of that decision.

Justin Draeger:

All right, and David has promised that we're going to talk about that in the new year in 2023, so we'll be on the lookout for that. Any resources you want to highlight, David, before we wrap up?

David Tolman:

Yeah, training and regulatory assistance, kind of joked about it in the transition, but they are working very hard, my colleagues, on keeping things up to date. And I'm just going to highlight this time the Student Aid Reference Desk on the topic of professional judgment, and we'll include a link to that in the notes. But it's a great place to start, and it has references to the statute, regulations and other Department of Ed guidance on professional judgment, because we can only hit the tip of it on this, but to delve into it the Student Aid Reference Desk is a great place to start.

Justin Draeger:

All right. Thanks very much. Jill, David, appreciate you coming on and sharing your knowledge, and we'll be back with you in 2023. Good to see ya.

David Tolman:

All right. Yeah, happy holidays. Happy New Year.

Justin Draeger:

Maria, let's bring you back into the conversation here. Besides editing and producing our podcast this week, you are one of our stellar and incomparable reporters who are keeping members informed on a day-to-day and weekly basis about what's going on in the world of financial aid. So what do we got going on this week?

Maria Carrasco:

Yeah, the Supreme Court announced this week that it will hear second challenge to Biden's student loan debt relief plan over its legality, and address whether the Department of Education followed the proper procedures in enacting the policy.

The justices agreed to hear arguments in a case brought on by a conservative group on behalf of two student loan borrowers who were excluded from Biden's relief plan. This follows the court's announcement last month that it would hear arguments in its February sitting in a similar case brought on by six Republican-led states. The court said that the second lawsuit would also be argued in the same February session, but it didn't indicate whether it would consolidate the cases or hear them together.

Justin Draeger:

And the Biden administration wanted this all considered together so it could sort of argue once and then move on. So good news, bad news, if you support debt cancellation. The good news is that we are doing it all at once, so this hopefully it doesn't become even more prolonged. The bad news is there is a second case that at least was legitimate enough to make it to the Supreme Court. So Maria, just one thing on timing on this, because I know you guys have been looking at this as well. The Supreme Court will hear this argument in February or March, then we have to wait for a judgment that won't come out in March or April, we're probably looking closer to June, which is when they release everything from the first quarter, right?

Maria Carrasco:

Yeah, that's correct.

Justin Draeger:

All right. What else is going on this week?

Maria Carrasco:

Yeah, so Representative Tim Walberg last week said he plans to challenge Virginia Foxx for the House education and labor gavel after Fox was granted a waiver to lead the committee again despite party term limits. The steering committee is expected to make its chair and committee decisions in the coming weeks.

Justin Draeger:

Yeah, this is really confusing. Well, a couple things. One is only the Republican caucus actually has term limits on their members being chairs of committees. So that's one thing that is unique to the Republican side. Representative Foxx has sought a waiver, and oddly that waiver was supported by a lot of members, including, and this is the odd part, Tim Walberg, who is now challenging her. And I don't have the behind the scenes to know whether there are concerns about the waiver because it's sort of like, as

the Republican steering committee thinks about this, it's sort of like your kids in that if you grant a waiver to that kid, then the other kids are going to seek waivers.

So if Mr. Walberg has some inclination that the waiver might not be granted, maybe he wanted to get his stake in the ground that he would want it, but it is a little bit odd in that he would support her and then also say that he would want it, so we're watching that. And did you say, Maria when are the steering committee decisions going to be made?

Maria Carrasco:

Yeah, so a decision's going to be expected in the upcoming weeks and members can stay up to date with news in Today's News.

Justin Draeger:

Okay. You guys will be reporting all of that out. Okay. Thanks very much, Maria. And thank you to all of our "Off the Cuff" listeners, thank you to all of our "Off the Cuff" community members. If you're interested in joining "Off the Cuff" community, go ahead and check out our show notes. We'll provide a link where you can sign up and join in some of the conversations that are happening behind the scenes. Send us your comments, remember to subscribe, tell a friend, leave a rating on your podcast app of choice, that helps other people find the podcast. And really hope that each of you have a healthy and safe and restful holiday break. Maria, we'll see them back in 2023, yeah?

Maria Carrasco:

Yeah. Happy New Year.

Justin Draeger:

Happy New Year everybody. Thanks very much.