

# NASFAA's "Off The Cuff" – Episode 145 Transcript

- Speaker 1: Off the Cuff is supported by the annual dues paid by NAFSAA members, at nearly 3000 colleges, universities, and career schools across the country. Not a NAFSAA member yet? Head to [NAFSAA.org/Join](https://www.nafsaa.org/Join) today to learn more about our member only benefits. That's [NAFSAA.org/J-O-I-N](https://www.nafsaa.org/J-O-I-N).
- Justin Draeger: Hey everyone, welcome to another edition of "Off The Cuff," I'm Justin Draeger.
- Allie Arcese: I'm Allie Arcese, with our communications team.
- Jill Desjean: And I'm Jill Desjean, with our policy and federal relations team.
- Justin Draeger: So, this is a special edition of "Off The Cuff." We just got off the stakeholders call with the Department of Education, and we are now looking at their frequently asked questions. Other members of the Off the Cuff team are off analyzing, and trying to get information out to members. But, we wanted to have a quick conversation here, Jill, and this one truly is off the cuff.
- Justin Draeger: Some of these things in the frequently asked questions, we expected. And, some of them are very unexpected. The thing I've learned through all this is as soon as we have the answer to one question, it seems to generate several more, so we might end up with even a longer list of questions at the end of this conversation.
- Justin Draeger: Let's talk through the stakeholders we just had, where Secretary DeVos spoke, Under Secretary Diane Jones spoke, and Assistant Secretary Bob King spoke, although most of his comments seemed to be reciting off very long URLs. High level, on the stakeholders call they talked about the second tranch of funds, and then Diane, this idea that this is the money for the institutional share. I think we probably want to focus most of our attention ... That's coming. Schools have to fill out a new certification and agreement form.
- Jill Desjean: Yeah, there will be new FAQs for that.
- Justin Draeger: Right. And, they have to have completed the certification and agreement form for the student grants before they can get that second tranch of funds. Like, you'll have to do both in order to get that second institutional share.
- Jill Desjean: That's right, yeah.
- Justin Draeger: So, if you were just waiting out for the institutional share, because you didn't necessarily want to deal with it, or maybe you had a very low amount, that's not an option. You have to do both.

Jill Desjean: Yeah.

Justin Draeger: In this frequently asked questions, Jill, to you, what sticks out the most here, in terms of new information?

Jill Desjean: Well, the DACA student question has been answered, unfortunately the answer is no.

Justin Draeger: Yeah, they don't say ... Do they say DACA in here anywhere?

Allie Arcese: No.

Jill Desjean: They do not. They tie the eligibility to these funds to Title Four eligibility, which excludes non citizens.

Justin Draeger: Yeah, it's probably a good thing people can't see my face right now, because I find this merciless and repugnant war on DACA students by this administration to just be repulsive and over the top. So, besides trying to rescind DACA in the Supreme Court, they've basically said you have to be Title Four eligible to receive any of these funds. The question then is does that mean only FAFSA recipients?

Jill Desjean: Interestingly, they do specify that you don't have to have filled out a FAFSA to be eligible, but you have to meet all of the student eligibility requirements that are met by filling out the FAFSA. So, citizenship, having a social security number, all of that stuff.

Justin Draeger: So let me do the mental gymnastics, here. Instead of just coming out and saying schools can't give any emergency grants to DACA students ... Whether there was a legal basis for that, we've discussed that on this podcast and webinars previously, to me it seems like ... It's not in the statute, the statute does not say anything about Title Four eligible students.

Jill Desjean: No.

Justin Draeger: This is definitely a reach, but for the Department and this administration to try to keep money out of DACA students hands, instead of saying something like, schools cannot knowingly provide emergency grants to DACA students, which to me is bad enough, but fine, maybe there's a legal basis going back to the '90s about that, public benefits going to undocumented individuals. What they basically said was, you must be Title Four eligible, which gets them out of all of this because to be Title Four eligible, you can't be an undocumented student. But, it also means all the people who didn't apply for Title Four eligibility are also going to be ineligible, unless they fill out a FAFSA. Or, I guess the school could somehow confirm that they're Title Four eligible, without a FAFSA. What does that mean, the social security check, the citizenship check, selective service check? How else would a school do any of that?

Allie Arcese: How easy would it be to do that?

Jill Desjean: It would not be possible to do that, quite honestly.

Jill Desjean: I suppose maybe it never says any place that the school has to actively confirm that the student meets those criteria, so I guess it could be an institutional application, where someone could say I certify that I am, I don't know.

Justin Draeger: I don't know either. My stomach's in a bit of knots about that one.

Jill Desjean: For sure, yeah.

Justin Draeger: That one bothers me quite a bit.

Jill Desjean: They've been clear that you have to be Title Four eligible, so I don't think many people would want to go and take that chance. I think they would tell anyone who hadn't filled out a FAFSA, go ahead and fill out a FAFSA, and that's how you can get these funds. That's going to take some time, that's not always possible for every student.

Justin Draeger: Yeah, I just find the lengths that the administration goes through to prevent any benefit going from DACA students, who for intents and purposes, consider this their home, grew up here, stayed out of legal trouble, and are contributing members of society by serving in the military, or going to college, and paying taxes. Just unfathomable. And then, when you add in the fact that other students, eligible students, potentially eligible students will also be harmed by this policy. It's hard to wrap your mind around.

Justin Draeger: Anyway, that said, that is definitely in there. The latest information from the Department of Education, does it answer the question about whether schools can apply any of these funds to outstanding tuition balances with the students consent?

Jill Desjean: Yeah, it definitively answers that question, and the answer is no. These funds cannot be used to pay institutional charges in any way, shape, or form. There doesn't seem to be any way for a student to say, "Go ahead and use this money to pay my charges." The only way they'd be able to do that would be if the school cut them an emergency refund check, and the school then paid the institution back with those funds. But, it would be literally putting the money in the student's hand, and then the student giving the money back to the institution. There doesn't seem to be any way for the institution to be able to apply those funds on the student's behalf to any charges from the institution.

Justin Draeger: I'm quoting here, from the FAQ. "The disbursement of the emergency financial aid grant to the student must remain unencumbered by the institution. Debts, charges, fees, or other amounts owed to the institution may not be deducted from the emergency financial aid grant."

Justin Draeger: So, that to me says there's no may not, except at the student's discretion. There's no may not, unless the student directs you to. It says, "may not be deducted from the emergency financial aid grant." Then it says, "The emergency financial aid grant may not be made to students through the use of a credit card that can only be used on campus or in a retail outlet affiliated with the institution." So, it has to be, basically, a cash grant to students. We've been making members aware of that possibility for, I don't know, for a little while now, that this was one of the models they should be considering. But, it appears to be definitively answered, may not.

Justin Draeger: Now, the other thing, though, that Jill, I'll ask you to flesh out a bit here. But, I heard on the stakeholders call that schools, though, who fronted money to their students for grants that would qualify for these emergency grants, if they did it ... What was the date, was it March 13th? I can't remember the date.

Jill Desjean: 27th.

Justin Draeger: March 27th?

Jill Desjean: Yeah, the CARES Act enactment.

Justin Draeger: So, if it was after March 27th but before today, or before whenever you start dispersing this money, you can reimburse yourself for those grants because the Department is, what? Considering those just the same money, except advanced to the student?

Jill Desjean: Exactly. They treat it as if the institution had made an advanced payment of the HEERF funds to the student, so they're letting institutions reimburse themselves. It would have to be for these expenses related to the campus disruption due to COVID-19, but if they were for that, and the institution did expend their own funds in anticipation of getting these HEERF funds, they can reimburse themselves with the student share of that funding, just for those purposes.

Justin Draeger: The other question we get a lot about is what about online students? Are they included or excluded? In the statute, they're excluded from the formula, but it didn't appear in the statute that they were in any way excluded from potentially receiving these funds, as long as they could demonstrate that they had incurred expenses related to COVID-19 related campus disruptions. This guidance appears to say otherwise, though.

Jill Desjean: Yeah, yeah. We had thought it would be more difficult to prove the case that an online only student might have disruption related expense because they had the technology, they had the equipment, they were already at home, studying that way. But, we said we thought if there was a way that an institution could justify such expense per the use of funds in the HEERF, that there was nothing

prohibiting exclusively online students from getting this funding. But, this guidance does specifically prohibit them.

Justin Draeger: I think they also talk about ... It reaffirms some of the things we talked about, in terms of the obligation to keep people employed. They doubled down on the idea of if you accept these funds, you have to keep people employed to the greatest extent practicable, so there does appear to be additional leeway there.

Justin Draeger: The guidance also reaffirms one of our trending asked regs questions, which is can institutions can continue to pay student from institutional funds for campus jobs, reimburse themselves from those funds for the emergency financial aid grants to students? The answer is no. That's because loss of wages is not an expense, these are emergency grants for expenses related to COVID-19 disruptions.

Justin Draeger: So, let me circle back for just a second, to this question about Title Four eligibility. I'm looking at the Department's guidance, and it talks about ... "In order for a student to be eligible to receive emergency financial aid grants," it says, "students who have not filed a FAFSA, but are eligible to file a FAFSA may also receive grants. The criteria to participate in programs under the HEA include but are not limited to citizenship, or eligible non citizen, a valid social security number, registration with selective service, and a high school diploma, GED, or completion of a high school in an approved home schooling setting."

Justin Draeger: I'm just wondering, I was just thinking out loud here, could a school just ask a student to affirm all of those things?

Jill Desjean: That's what I was wondering earlier, yeah. Can your institutional app just ask, "I certify that I meet this checklist?" I'm not filing out a FAFSA, but I say that this is true, and basically we just put it on the student, instead of having it be on the school.

Justin Draeger: I'm always trying to find this wiggle room. But, based on everything that I've seen out of the Department, I don't know that I would advise any school to actually do that anymore.

Jill Desjean: Me either.

Justin Draeger: This just seems so extreme, that ... I don't know.

Jill Desjean: Yeah. The intent is clear, you are probably violating the intent by saying, "Oh, well I'll just ask."

Justin Draeger: The Department's intent?

Jill Desjean: The Department, not Congressional intent, correct. Right.

Justin Draeger: Right, because then it also says, "The criteria to participate in programs under Section 484 of the HEA include, but are not limited." So, it's not even an inclusive list, it says it includes these following things. So, even if you had a student affirm these things, there are all sorts of things not on this list that you would also have, too.

Justin Draeger: There wasn't anything in this guidance, or on the stakeholders call, about when the funds had to be used, right? It didn't say anything about right now, or in the fall, or anything like that, that's still not addressed. I'm not sure that it needs to be, the certification forms said one year. There's not additional guidance there?

Jill Desjean: Yeah, even the one year thing is in there, and then there's the promptly and expeditiously, or something to that effect language, in the certification.

Justin Draeger: The guidance also talks about incarcerated students that are participating in the Department's experiment, Second Chance Pell?

Jill Desjean: Yeah. You guys have probably seen in the news that a lot of states and jurisdictions have been releasing prisoners because of COVID-19, so the guidance does address this in question eight, they talk about if an incarcerated individual that was participating in the Second Chance Pell experiment was released as a result of the national emergency, and stays enrolled in their program underneath the existing Second Chance Pell experiment, if they have those expense that would qualify them otherwise, they could qualify for an emergency financial aid grant.

Justin Draeger: I don't know what to say about that. Out on the back, that's great. I just am so reeling over the other guidance that, I don't know.

Allie Arcese: I just honestly don't understand the reasoning for locking it down to Title IV students only. Surely, those are the students who are likely going to have the most need, but you can't just say that other students who don't receive financial aid have not been impacted by all of this, financially.

Jill Desjean: Well, it's not just students who get financial aid.

Allie Arcese: Right, Title IV eligible.

Jill Desjean: They say that they're eligible. Yeah, it's just a way of weeding out.

Justin Draeger: It's DACA.

Jill Desjean: It is.

Justin Draeger: It's got to be DACA, I don't see any other reason for this.

Jill Desjean: Right.

Justin Draeger: If so, I'd love to hear it from the Department, but they did not provide any reasoning for the Title Four eligibility. It clearly is not in the statute. Not in the statute.

Jill Desjean: No.

Justin Draeger: Unfortunately, the time to push back against this guidance, or file a lawsuit, I just don't know if there's time for people to do it. I think people would be reeling after today, just trying to figure out how to reconfigure their models.

Justin Draeger: I guess, Jill, one other question about the student accounts piece. There's this technicality that I think schools are wondering about. Can we run this through student accounts, or not? Do you feel like that's made clearer today, or not really?

Jill Desjean: Yeah, in the written guidance I think it is. For those of us who were able to get on the call, and I did check [inaudible 00:14:49] before we got on, and it seems like tons of schools were not able to get on, so those of you won't be as confused as we were. But listening in, it sounded almost as though the Department was saying that you just couldn't use student accounts in any way, shape, or form, to disperse these funds. The written guidance is much clearer, in basically making it seem as though you could use your financial aid management system to award and track these funds, disperse them through your student accounts office, and then cut checks. You would just have to make sure that the fund was set up in a way that it could not be applied to any charges on the account.

Jill Desjean: So, the dollars that go into your financial aid management system have to just flow through your student account system, just as a way to ease the way of cutting a check for a student because you've got a system in place. But, it doesn't sound like the funds cannot hit the students' account, it sounds like the funds just cannot be applied toward any institutional changes. So, that is hopefully a relief to some schools, who just don't have another way of cutting checks to students easily.

Allie Arcese: Is making that adjustment in their systems, is that how any of them are set up already? Or, is that going to take some work on the backend?

Jill Desjean: Yeah, I think it'll take some work on the backend, for sure. Justin, go ahead?

Justin Draeger: Yeah, I was going to say I think Francisco said that ... He's a PeopleSoft school, if I remember correctly from last week, and he said that there was a way that they could do that, they've done it for other types of emergency grants that they do on campus. But, I think that might be an exception not the rule, so I think there is capability within most major FAMs, but whether schools automatically have that set up or not is a completely different question, probably answered campus by campus.

Jill Desjean: Yeah. I'm sure that some systems have a way, if you have a certain fund that can only be applied to a room and board or something like that, you can link a fund to pay certain things. Or, unlink it from paying certain things, I'm sure there's some way to do that. And there's other system stuff, too, because there's a whole over award thing to think about as well. Because these funds are exempt from EFA, you could have situations where students look like they're over awarded, or maybe even have funds that are over their cost of attendance, so schools are going to have to tweak systems to be able to accommodate that as well.

Justin Draeger: We will have additional information out through *Today's News*. Tomorrow, we will have another podcast later this week, digging into some of these issues. Schools should continue to send us their questions.

Justin Draeger: Again, this was one of those truly off the cuff episodes, so thanks for joining us. Remember to send us your questions. We might not be able to get to all of them, just because the number of them, but we do see them all, and they help inform our written guidance and AskRegs questions. So, stay well, everybody.