

# NASFAA's "Off the Cuff" Podcast - Episode 206 Transcript

*OTC AskRegs Experts: New R2T4 Rules and How NCAA's EFA Guidance Impacts Aid Offices*

Justin Draeger:

Hey, everyone. Welcome to another edition of Off the Cuff. I'm Justin Draeger.

Jill Desjean:

I'm Jill Desjean with the policy team.

David Tolman:

And I'm David Tolman with training and regulatory assistance.

Justin Draeger:

Welcome, everybody. Welcome, Jill and David. Glad to have you here. Just as a reminder to folks. We are changing up Off the Cuff just a little bit bringing you different content each and every week. Some weeks we're focusing on what's going on inside the Beltway like last week with Jon Fansmith from the American Council on Education.

Justin Draeger:

This week, we're doing a regulatory deep dive on two issues that financial aid administrators have been dealing with on campus. One is R2T4 changes and one is benefits for student athletes. Next week, we'll be talking to financial aid administrators from the field and so every week, we're changing the focus of Off the Cuff just a little bit.

Justin Draeger:

What's not changing is getting you the information you need to do your jobs and stay up to date with everything happening in the world of financial aid. Let's get started with you, David. David, you're new at least to the podcast listeners but you do this for NASFAA on our NASFAA U and webinar side, right?

David Tolman:

Yeah. I'm primarily involved in the NASFAA U courses. I do talk to people but not in this format. I'm glad to be part of Off the Cuff and this may be the only time you hear from me. We'll see how it goes.

Justin Draeger:

As I said earlier, this is obviously the most important thing you've ever done in your career. I don't want to put too much pressure on you.

David Tolman:

Yeah. Thanks for that reminder.

Justin Draeger:

How long have you been at NASFAA, David?

David Tolman:

I just passed nine years. It'll be 10 years this next spring.

Justin Draeger:

Yeah.

David Tolman:

Hard to believe I've been here that long, but I really enjoy it.

Justin Draeger:

In that 10 years, you grew a beard. That's right, right? You didn't have a beard when you started.

David Tolman:

No. This is more of a COVID leftover.

Justin Draeger:

Okay. You have your COVID beard and I'm assuming did it turn white in the last 10 years?

David Tolman:

I think it turned white in the last year and a half.

Justin Draeger:

Okay. This is also COVID-related?

David Tolman:

Along with everybody else. Yes.

Justin Draeger:

And for our listeners, not all NASFAA staff are located in Washington, D.C. You're coming to us from NASFAA West?

David Tolman:

Yes. I'm coming from the Boise branch of NASFAA in Boise, Idaho.

Justin Draeger:

Before you were at NASFAA, you worked in financial aid of course and there in Idaho, right?

David Tolman:

Yeah. I was the director of financial aid at Boise State University and prior to that, I had a few positions in the financial aid office at the University of Utah.

Justin Draeger:

Thing that I've always found interesting about you is you have a very wry sense of humor. If I were to characterize it, it's fair to say that you are a fan of British comedy?

David Tolman:

Yeah. I do like British comedy and I like British detective shows. Most of my viewing comes from PBS.

Justin Draeger:

What you do well is you translate what is something that's not funny to me into something that's very funny when you're interacting with the NASFAA staff or with our members in those NASFFA U courses, which is I think one of the reasons that people keep coming back time and time again. Our classes are interesting, they're funny, the content's good obviously but you have this way of livening things up but in a really unique sense of humor I think.

David Tolman:

Yeah. It's deadpan and I'll say something if people don't know me well... They're like, "Are you kidding or are you being serious?"

Justin Draeger:

Yeah.

David Tolman:

I think we've had that conversation a few times, especially during my first year or so with NASFAA.

Justin Draeger:

All right. Well we're glad to have you on David and both you and Jill are here because you guys are engaged in work in dealing with member questions as they come in. I want to start with you David because we did a webinar... I guess it was several weeks ago but there are residual questions that continue to come in on R2T4, specifically on some of the latest guidance from the Department of Education. David, why don't you start and catch us up to where we are with R2T4?

David Tolman:

Okay. Return of Title IV funds have some new regulations that were issued as part of the final rules on distance learning and those were published in September of 2020. The proposed rules were published actually in April of 2020. Financial aid administrators are pretty busy with COVID and HEERF during that time.

David Tolman:

We'll talk about that in a second but they went into effect on July 1st and the main thing that these rules did is taking something like Return of Title IV Funds which is already pretty complicated but it included changes to the treatment of R2T4 when a student withdraws from a program offered in modules.

Justin Draeger:

Okay. Let me pause right there because we had negotiators who were on that negotiating committee and one of the objectives here was that R2T4 was already complex. Particularly complex for students

who are enrolled in modules and the idea was that we were going to try to make this easier. Did that happen?

David Tolman:

In some ways.

Justin Draeger:

Okay.

David Tolman:

It's easier. There will probably be as a result of this, fewer students who will be considered to have withdrawn.

Justin Draeger:

Okay. Let's get really basic for just a second. Define a module. What's falling under the definition of a module here?

David Tolman:

A module is any course or a series of courses that run shorter than the length of the full term that those classes are attached to, and some campuses might refer to them as blocks or sessions, short courses but whatever they're referred to, if it runs shorter than the full term, it is called a module as far as the Department of Education's concerned.

Justin Draeger:

If I go into the recesses of my brain and think about R2T4 before these new regulations... The complication with modules was you might have students drop out of one module but stick to another and so the question was when you would do R2T4. Do these new regulations change when schools are doing calculations or calculating withdrawal versus they might still be enrolled? What are the changes here?

David Tolman:

The changes come to determining whether a student actually has withdrawn. That's the biggest change. Prior to this change, there were some inequities that occurred and people who are familiar with R2T4 will understand that those who aren't might not but you could have two otherwise identical students. Same EFC, same class schedule but maybe they withdrew two days apart and because of the sequence in which those two students withdrew, one might be able to have kept all of their aid and the other may have had to return half of what they had disbursed to them.

Justin Draeger:

Because one student withdrew earlier in the term and one stuck it out and withdrew later in the term?

David Tolman:

It could be two days apart and it could be one withdrew while they were still enrolled in another module and then dropped that one later while the other one withdrew from all of them all at once.

Justin Draeger:

I see. The change in the regulation does what?

David Tolman:

It does two things. And Return of Title IV Funds gets pretty detailed pretty quickly. But it added criteria where students who are enrolled in modules but dropped all of their classes, they might not be considered a withdrawal and become subject to those R2T4 calculations.

Justin Draeger:

Mm-hmm (affirmative).

David Tolman:

... and that happens if the student drops classes during the term after having already completed some modules. Either half-time status or a certain percentage of their days they might be exempt. That exemption did not exist before and that's the reason why fewer students will be considered to have withdrawn.

Justin Draeger:

Okay. You said two things. What's the second thing that it did?

David Tolman:

The second thing gets a little more obscure but the other thing that the final rules did was change the definition of what a student's scheduled enrollment is at the time of withdrawal and if the student doesn't meet any module exemptions and they have withdrawn. The reason scheduled enrollment is so important is it determines the percentage of the term the student completed and if the student completes 60% or more of the term, they have earned 100% of their aid.

David Tolman:

Determining what they've completed based on what they were scheduled to complete is really important. Previously, scheduled enrollment was based on what the student's enrollment looked like at the time of the student's withdrawal but the new regulations made a change to not look strictly at the student's enrollment but to look at coursework and modules that were used to determine the amount of the student's aid eligibility.

Justin Draeger:

So if I'm an aid administrator and I'm looking at time... As simple as R2T4 can be, that's relatively simple. I'm just counting up time and looking at 60%. Who's going to make the determination of whether they completed 60% of the coursework?

David Tolman:

The financial aid office is going to determine.

Justin Draeger:

And I imagine David that they would have to do that in consultation with faculty?

David Tolman:

Might be in consultation with the registrar because how they determine that... They introduced this concept of a Return of Title IV Funds freeze date and I think it's fair to say the Department of Education struggled to figure out how to regulate this determining what their aid was based at the time of their withdrawal.

David Tolman:

What we have is a lot of sub-regulatory guidance and it has evolved and it has caused some confusion and that's what's led to a lot of the questions we've received because it's based on whether or not institutions put in what's called an R2T4 freeze date.

Justin Draeger:

Is that an optional date that they can put in?

David Tolman:

Yeah.

Justin Draeger:

That's an optional date.

David Tolman:

That's an optional date. They can choose for it to be any date they want it to be as long as it generally captures when most students would've had the opportunity to register. That's the only qualification on it, in simple terms. If a school has a freeze date, then they use what the student's scheduled enrollment was as of that freeze date. The only adjustment would be if the student actually enrolled and started attending a module later after that freeze date.

David Tolman:

Attendance is always important but freeze date allows them to capture it. Schools that don't have a freeze date, and this is where things have changed actually several times since last spring. It used to be that if a student was registered for a module at any time, once registration opened, that module would count in the denominator.

Justin Draeger:

Mm-hmm (affirmative).

David Tolman:

Now, when I was back at a school, the only place I could have found out whether or not a student was enrolled in a module is digging through logs in our system. And we actually met with the Department of Education to explain some of the challenges with this and to their credit, they did change that recently and I think it was published on October 6th to say if a school doesn't have an RFT or Return Title IV Funds freeze date, then they only start counting the module as part of the student's schedule if they were registered on the first day of the payment period or anytime between then and when the student withdrew. You can see it gets complicated pretty quickly.

Justin Draeger:

Yup. So David, let me ask you a question. You just mentioned when you were back on campus and the number of records and then the change in the Department of ED guidance because of the work of the TRA and our policy team. If you were back on campus and you had a proliferation of module programs that students were enrolled in, would you implement a Return of Title IV freeze date?

David Tolman:

Yeah. I think as it was originally proposed, we would've not done that but as it has now been defined, I would definitely put in an R2T4 freeze date and I would align that with my Pell recalculation date.

Justin Draeger:

All of this would be lined up and hopefully with this freeze date, then you would be exempting some of the students who withdrew?

David Tolman:

It would actually have the biggest impact on the financial aid office and will make them easier to determine... Okay. With modules and student was adding and dropping modules and adjusting their schedule, what do I use in their denominator to figure out whether they completed 60%?

David Tolman:

Being able to capture it on a specific day allows the financial aid administrator to just look at that day to determine the student's schedule rather than "Okay. Did they ever register for a different module?" And if they did from the first day till the time of withdrawal, then you count it. Even if they're not registered for it on the day they withdrew.

Justin Draeger:

Obviously, this goes a lot deeper and we just did a webinar on this not too long ago that people can check out. The link will be in the show notes. We've published flow charts that help try to guide folks through a step-by-step process and you are having a NASFAA U course on this... What? This coming January?

David Tolman:

Yeah. It starts in January and there's still seats available.

Justin Draeger:

And those do tend to fill up pretty quickly so if folks are interested in enrolling in an R2T4 class, how many weeks is that class?

David Tolman:

It's four weeks.

Justin Draeger:

Okay. We're not going to be able to explain in 10, 15 minutes here what you would dive into in four weeks but in summary, let me ask you a question and I'm going to go back to the first question I asked. Is what we've done easier or more difficult than what we had before when it comes to R2T4 modules?

David Tolman:

I think if you would ask most financial aid administrators, it's more difficult.

Justin Draeger:

Is it more difficult because one, maybe it was buried inside distance education rules and they didn't really have time to plan for it and there was all this other stuff going on with COVID. Is it more difficult because it's a new way of thinking about R2T4 modules or is the process... Once you get past the initial inertia of thinking about this differently and implementing new policies, or is this just going to be into perpetuity more complicated? Have we taken one step forward and two steps back here?

David Tolman:

I think once schools understand the rules, R2T4 has always been one of the more complex options to be working on in a financial aid office and if you wanted to scare somebody, the director could say, "Hey, I would like you to take on R2T4." That would provide a nice Halloween boo. It's always been but it's really difficult for two reasons. There's a 49% requirement, there's a 60% requirement.

David Tolman:

Two different calculations. They kind of run parallel but there's a lot of confusion on what goes into the 49% and what goes into the 60%. I think if schools can figure that out and understand that there's a difference, that will help and then the other one is determining whether or not you are going to have a freeze date and then go through a few cycles with that policy and I think it will become a part of the routine but it may take some manual work a little bit more than it did before.

Justin Draeger:

I'm really glad that we have folks on staff who can explain this. Not just the members but to me because it does seem like an entirely new way and I had followed all the way along as we were going through the negotiated rulemaking process. I'm hopeful after hearing from a few aid directors who have implemented these new policies that it was a steep hill to climb but once they climbed it, they've been able to sort out what they're going to do on campus and hopefully, as we talked about earlier, there'll be fewer people in modules who will be subjected to these calculations. Another time, David. We'll have to talk about the entire principle of inequity around R2T4 but we'll save that for another day.

David Tolman:

There's a lot to talk about.

Justin Draeger:

Thanks very much. Let's turn to you, Jill. There's a brewing topic and I think a lot of schools are scrambling or will be scrambling shortly for answers and it has to do with the NCAA's recent guidance on compensation and benefits that student athletes can receive. Why don't you catch us up with some background here and then we'll dive in?

Jill Desjean:

Sure. Yeah. The Atlantic Coast Conference, the ACC this week released to their member institutions some responses to questions that they had posed to the Department of Education about these NCAA education-related benefits rules as they relate to federal student aid.

Jill Desjean:

They were looking specifically to find out about the money that student athletes are now permitted by the NCAA to receive as an award for academic achievement or as a graduation award and whether those funds would be considered estimated financial aid or EFA for the purposes of awarding title for student aid.

Justin Draeger:

You just said if they receive money for academic-

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

... achievement?

Jill Desjean:

Yes.

Justin Draeger:

These would be scholarships but they're not athletic-related scholarships?

Jill Desjean:

Right. Right.

Justin Draeger:

Okay.

Jill Desjean:

I can dig way into the background on this and the Supreme Court decision and everything else but this does relate. Yes. Not to the athletic-related compensation. This relates to the academics-related.

Justin Draeger:

To the academics.

Jill Desjean:

Yeah.

Justin Draeger:

Okay.

Jill Desjean:

Yeah.

Justin Draeger:

Yup. Why wouldn't that count as EFA?

Jill Desjean:

Great question. The Department of ED's response on that was that it is EFA. I think some background on this issue might help before I move into the guidance that the department came up with. The NCAA changed its rules earlier this year to allow up to \$5,980 for student athletes for these academic or graduation awards that I just mentioned and this change came actually as a result of an injunction issued by a lower court in an antitrust suit that was filed years ago by some student athletes which the US Supreme Court held in a unanimous decision in June of this year and that decision stated that the NCAA can't prohibit schools from providing education-related compensation to student athletes.

Jill Desjean:

This gets at that concept of amateurism in college athletics to ensure that all colleges and universities were treating student athletes as amateurs, they established these rules that schools had to follow with respect to what compensation was and was not allowed and under the previous NCAA rules before this summer change permitted come compensation included things like scholarships for tuition, books, room and board but most other forms of compensation were not allowed.

Jill Desjean:

The Supreme Court ruling this summer prohibits the NCAA from having these rules that ban certain types of education-related benefits. The decision was pretty narrow. It didn't blow open this entire concept of amateurism in college athletics and it didn't even strike down all of NCAA's authority to make rules about athlete compensation. For instance, it still emphasized that the NCAA has the right to restrict education-related benefits and to define such benefits and the court didn't go so far as to prohibit the NCAA from limiting athletic scholarships, other compensation related to athletic performance.

Jill Desjean:

This was limited to education-related benefits like I mentioned before and the decision specified that the NCAA could continue to limit cash awards for academic achievement but that they couldn't set a limit lower than what exists for cash awards already allowed for athletic achievement and that's where that \$5,980-

Justin Draeger:

Mm-hmm (affirmative).

Jill Desjean:

... number comes from. That's the current limit on the awards for athletic achievement. As a result of that ruling, NCAA decided to allow up to just under \$6,000 for additional compensation to athletes.

Justin Draeger:

One of the questions was basically to the Department of Education. How should this money be treated? I guess one of my questions is why would it be treated differently than any other estimated financial assistance?

Jill Desjean:

Yeah. It was interesting. The ACC first asked the department just "Is it EFA?" They weren't making an argument either way and the department came back and they said, "Yes. It is." Then they came back and ACC pushed back on the department's decision and they said, "Yeah. But these awards are designed to be awarded to students for a certain level of achievement. They're not just awarded because the student is enrolled." Because the department had gone back to their rules on EFA where if an award is contingent on a student's enrollment in college, then it's considered EFA.

Jill Desjean:

And they said, "Yeah. We're not just giving these students for being here. We're giving these students awards for having reached some level of achievement." And they also argued that or they questioned, "What if they documented the criteria for this kind of achievement? Would that make a difference?" But ED held their ground. They said that treatment of aid as EFA doesn't hinge upon what types of expenses the aids intended to cover noting that the student has funds available for higher education regardless of what they spend them on.

Justin Draeger:

Jill, you mentioned that this was a pretty narrow ruling. I think one of the big questions that a lot of schools might be grappling with, and sometimes grappling in isolation because we can't have collusion here between colleges and universities on what they are or aren't going to give athletes, but I think one of the challenges here is what do you do with all of the aid or all of the compensation or all of the scholarships that these student athletes are going to receive? Besides the academic ones, what do you do if a student lands a name and likeness deal with Nike or with their local car dealership-

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

... back home or wherever they are now able to benefit off their name and likeness and how is that treated for financial aid purposes?

Jill Desjean:

Yeah. A lot of that still remains to be seen. This guidance that went to ACC just went to ACC so it hasn't been publicly issued yet and we reached out to the Department of Education to ask them... Were they planning to actually issue formal guidance? They did say that they're trying to do something that's more comprehensive.

Jill Desjean:

They were just answering a handful of specific questions that ACC asked, but the department is planning on coming up with some comprehensive guidance presumably to cover not just this issue of these

education-related benefits but also name, image and likeness, and the other things surrounding the big picture of student athlete compensation.

Justin Draeger:

Okay. We expect more there-

Jill Desjean:

Yeah.

Justin Draeger:

... and the department has said they'll be issuing something there. Let's do a little game of conjecture here, okay? If a student athlete lands a deal. First of all, if they get the academically-related scholarships, that's all EFA. Okay. That seems pretty clear-cut and in line with how we treated other forms of financial aid. If they receive a deal for name and likeness from a local car lot dealer for example and the school is aware of it-

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

... I would venture to guess that that's just compensation, right? That's income.

Jill Desjean:

Income. Right.

Justin Draeger:

If I'm applying that as it exists today, that won't show up on the FAFSA for two years unless the aid administrator decided to exercise some professional judgment and update their income today that would make them ineligible for certain types of financial aid. Do you see any flaws in my logic there or?

Jill Desjean:

No. That's where I would lean too. It really doesn't seem like landing a deal for some sponsorship or something like that seems like a job. It seems like employment as opposed to winning a scholarship which is considered EFA. There's a gray area there. I could see it go either way but to me, it does feel like you said. Income which means reported as taxable in your tax returns and shows up two years later in your FAFSA when you may or may not be enrolled as a student anymore.

Justin Draeger:

Right. Nobody can force the aid administrator to do professional judgment.

Jill Desjean:

Right.

Justin Draeger:

This would not be required but I suppose if they wanted to because they wanted to count that as part of their need analysis formula, they could do something like that-

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

... but the only thing would be two years down the line to see if there's some conflicting information between what they knew they signed a contract for and whether it actually showed up as income. That's a lot to ask but some athletic departments I think are actually creating databases of contracts that athletes are signing. The school is aware of them-

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

... if they're collecting the information. There's a lot of financial aid implications here but one is if your school's collecting information, it'd probably better make its way over to the financial aid office at some point.

Jill Desjean:

Yeah. Yeah. Even if you have to track it two years after the event happened.

Justin Draeger:

Yeah. All right. We're waiting to see if there's any additional information.

Jill Desjean:

Mm-hmm (affirmative).

Justin Draeger:

Any other implications for schools that they should be thinking about here?

Jill Desjean:

It'll be interesting to see what the Department of ED's guidance says and I'm sure that it will probably answer some questions and maybe raise some new ones as well.

Justin Draeger:

Yup.

Jill Desjean:

Just keep an eye out for that.

Justin Draeger:

Okay. Thanks very much, David, Jill. Appreciate you being on the episode. Thanks very much for your expertise.

Jill Desjean:

Thanks for having us.

David Tolman:

Yeah. Thanks for having me.

Justin Draeger:

All right. Owen, why don't you give us a rundown of what else is happening in the news?

Owen Daugherty:

Student debt forgiveness is back in the news this week. A group of house lawmakers are pressing President Joe Biden and Education Secretary Miguel Cardona to release a memo about the president's authority to unilaterally cancel student debt. This letter from house progressives is asking for the memo to be released by October 22nd. This memo was originally requested back in February so we'll see if we see that anytime soon.

Justin Draeger:

Yeah. Next week. All right. What else?

Owen Daugherty:

The education department recently settled a lawsuit with the American Federation of Teachers union who had accused the government of mismanaging the Public Service Loan Forgiveness program, which the education department as we know is already looking to overhaul. As part of this settlement, the department said it will automatically review applications for the borrowers that were previously rejected as long as they had made those 10 years of qualifying payments.

Justin Draeger:

It sounds like that settlement is in alignment with the forgiveness waivers they had announced a week ago as well.

Owen Daugherty:

Right. I think that cleared up their ability to make this settlement. Kind of goes hand in hand.

Justin Draeger:

Okay.

Owen Daugherty:

Meanwhile, the department late last week announced it would be revitalizing the dormant Office of Enforcement which will go underneath the Office of Federal Student Aid. The department previously had this under the Obama administration. What this means for schools and their relationship with ed... Time will tell but it's I think noteworthy that they are trying to bring this back.

Justin Draeger:

Yeah. That's something we're going to want to watch pretty closely. Okay. Where can they find all this?

Owen Daugherty:

Yeah. All of that can be found in our daily newsletter and on our social media feeds. We'll also link our coverage of these topics in the show notes of this week's episode.

Justin Draeger:

All right. Thanks very much for catching us up, Owen. Thanks, everybody for listening and joining us for another edition of Off the Cuff. This one focusing on two regulatory issues. Join us again next week where we'll be talking to some financial aid administrators from the field. If you are interested in joining us for a future episode of Off the Cuff, please reach out to us at [web@nasfa.org](mailto:web@nasfa.org). Remember to subscribe, tell a friend, leave us a review on your platform of choice. That helps other financial aid folks find this podcast and we look forward to hearing and talking to you very soon.