

NASFAA's "Off the Cuff" Podcast – Episode 339 Transcript

OTC AskRegs Experts: Shutdown Interruptions and an Update on FWS Guidance

Hugh Ferguson:

Hey, everyone. Welcome back for another episode of Off the Cuff. I'm Hugh Ferguson with our communications team.

David Tolman:

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

Hugh Ferguson:

Welcome back, David. It's been a while since we've had you on the podcast, but-

David Tolman:

It has been a while. I hope you've had a good summer.

Hugh Ferguson:

Yeah, a very active summer. I have a lot of updates from the Department and yeah, thankfully I got a little time for things to maybe have moments of quiet, but this week has been anything but that.

David Tolman:

Yeah, I'm sure.

Hugh Ferguson:

Yeah. So as we were chatting before you hopped on today, there's a lot happening in all aspects of the federal government this week. We have a lot of our colleagues focused on what's going on in negotiated rulemaking with the RISE Committee convening this week. We have a whole bunch of rundowns in Today's News that folks can check out and catch up on. But for this week, typically with our AskRegs episodes, we try to dive into some more evergreen topics or things that are really in the weeds, and that's not to say that this week isn't going to be in the weedsy, but the topic for discussion this week is very top of mind because we're going to get into what's going on with the government shutdown and its implications for programs within the Department of Education. So David, can you kind of share what insight you have on what's going on now that we're experiencing a lapse in appropriations?

David Tolman:

Yeah, so I wanted to pare it down to what financial aid offices, where they might see the impacts and what's going to be continuing to run to clear up any misconceptions. You've written a great article in Today's News about it if people need to catch up, but also there's an electronic announcement that was posted on October 1st, so just Wednesday. GENERAL-25-42, Government Lapse in Appropriations - Federal Student Aid Processing and Customer Service Guidance, which we can link to in the show notes. So yeah, let's talk about some of those things that financial aid administrators probably need to be most aware of.

So the first one, most important things, then we'll go on to lists of things that are working and things that are not. But most important to know is the FAFSA, the online FAFSA, the FAFSA processing, that is still up and running, so students can continue to apply for Federal Student Aid programs. Also for Pell TEACH and Direct Loans, originations are still working. Financial administrators can still continue to make new offers and dispersing aid from those programs are okay. Federal Work-Study and FSOG are a little different. You can still disperse FSOG and pay federal work-study earnings or FWS if the offers for those programs were made to the student prior to October 1st. So making new federal work-study awards or FSOG is on pause, and that started on October 1st and will continue until appropriations resume. So in the short time since October 1st and when you're listening to this podcast, if you had made an offer to a student October 1st or later, then you'll want to make sure that that student is not earning federal work-study or being dispersed the FSOG funds, but otherwise all the essential functions are still operating.

Hugh Ferguson:

Yeah, it's hard to believe that we had a FAFSA launch on October 1st and it already feels like old news.

David Tolman:

Well, that's a good way of putting it. It does feel like old news. Kind of came and went. So some of the things that are on, so the FSA systems, the online FAFSA, FPS, COD, G5, FSA Partner Connect, NSLDS, SAIG Mailbox, those are still operating. In some cases when we get to the things that are not working, we'll get to some of the response times you might get to submissions that you make using those systems, but for the most part, especially G5, which may have been down for a few hours on Wednesday, but it's up so schools can continue to draw down funds and dispersing funds.

As I mentioned, the awarding of Pell TEACH and DL, that's still on. It's important to know that students still need to be repaying their direct loans. That did not go on a pause. So repayment of loans for students who are in repayment, that is still on. Customer service contact centers are still up. So if students or borrowers have a question about repayment, they can make those calls and get those answered. And you know more about this than I do, but negotiated rulemaking is continuing as well for the RISE committee.

Hugh Ferguson:

We didn't know what was going to be happening with the committee for a while. This week we had a couple of differing plans for what the Department was going to do if and when a shutdown did take place, because a lot of times with the messaging around whether there will be a lapse in appropriations, it can seem like one thing is going to happen and at the last minute all of a sudden there's a magical way to avoid it, but that did not happen this year, and so we had heard Department of officials originally talk about possibly going to a virtual format within, I think, the next two weeks or sometime in October to just finish up whatever the committee was trying to wrap up, depending on how far they moved through the issue papers.

But instead, the committee has found a way to continue with the in-person meetings to work through these issue papers, and one of the reasons we've seen the Department able to continue with this is that they've made the case that the negotiations are an essential function of the government for the next two weeks because they're trying to meet a July 1st implementation date for rules to be finalized from this committee, and they're able to use that July 1st implementation date because it's referenced in the reconciliation package that was enacted into law over the summer. And so since that date is specified in the law, the Department is using that as their sort of necessary timeline they have to follow. And so if

this committee's work was delayed, it could further delay their ability to meet that deadline, and as things are now, they're already operating on a very condensed timeline to get those final rules out. So that's what the Department has outlined as their justification for continuing in-person this week, and we'll see what sort of impact the shutdown could have on how the committee operates.

David Tolman:

Yeah, because I saw on something that was released, their contingency plan that was released earlier in the week, they were making plans in the event of a shutdown. They had some alternative dates that they were going to meet virtually in the middle of October, but they're still doing it if people are paying attention, and so the 3rd is the last day for this one, right? So if people want to stream it, they're listening to this Friday morning and they want to hurry and stream, they can still stream and pay attention to what's going on in the negotiated rule-making, right?

Hugh Ferguson:

Yeah, that's an important note. The virtual meetings would only be virtual for the folks that are convening. The sessions have been available for the general public to observe the entire week. So the only thing that the Department was saying would change in the wake of a shutdown was that the negotiators would reconvene virtually, but they're still in person, and folks can still navigate to the links the Department has provided to tune in if they want to.

David Tolman:

Okay. And I did notice on the top of their website, there's this disclaimer, "Due to a lapse of appropriations, information on this website may not be monitored or maintained, inquiries may not receive a response until appropriations are enacted," but something like that is probably on most government websites right now as a disclaimer. So those are the things that are on. So let's move to the things where we might see some interruptions to our daily work, and one of the big ones is the Knowledge Center website. Communications are going to be paused on that because the website's not being maintained. So I don't know. We might not... Things may change, but we might not see electronic announcements and Dear Colleague letters and those kinds of updates that we're used to seeing on the Knowledge Center website.

Also, as a caveat to these things that are not working, you might see these news reports. I found one that there's a hundred of the FSA staff, 85% of them have been furloughed, but when you see that, it's like, "Oh, how can they keep anything running?" But it's important to know that many of the services that the Federal Student Aid performs are done by contractors or through some types of funding that provides for continuation of those services. So yeah, it's unfortunate that 85% of our colleagues in Federal Student Aid are on furlough right now. That doesn't mean that 85% of everybody who works on our processes has been furloughed. So that's why some of the websites and those essential things can still function. As I mentioned, so in the discontinuation list, no new FSOG or federal work-study offers, that started on October 1st, but you can disperse and draw down for the campus-based programs if those offers were made prior to October 1st, and federal work-study. So you can continue to employ students as long as they are offered, or they were offered those federal work-study funds prior to October 1st.

Regional Department of Ed offices are closed. So a lot of the staff that we might go to for help as opposed to where students might go for help, those are going to be closed. Also, the eZ-Audit contact center, that's closed, the school eligibility and oversight services branch. So if you have a question about your e-app or it's time to renew it or those types of questions regarding your e-app, you probably are

not going to be able to contact anybody with those questions until things resume. I also saw reimbursement for schools on Heightened Cash Monitoring 2 or HCM2. Not a lot of those schools, but this definitely is a huge impact to them. Claims can be submitted, but they will not be processed. So that is a big thing for those who are on HCM2, that they can submit claims, but they won't receive the money.

And then same with any type of eligibility action that a school might submit on FSA Partner Connect. Those types of things are not going to be processed as they pertain to the school. Also, applications for students, applications for income-driven repayment and public service loan forgiveness are basically on hold. It said delayed, but Hugh, you talked a little bit about this in the article. Those are basically not going to be processed, right?

Hugh Ferguson:

Right. Yeah, and there's applications outstanding for the PSLF Buyback program as well as borrowers that have been stuck in a limbo with the repayment system for IDR with the SAVE plan and trying to get into new repayment programs, and it's especially difficult for those borrowers that are close to possible forgiveness because some of our members might remember there was a provision in the American Rescue Plan Act that allows for debt cancellation to be tax-free through 2025, and so if the Department has not processed those applications before the end of the year, there could be a significant tax bill associated with that.

And we were talking with some folks on the policy team about is there a way to, if something's delayed, could it still be applied retroactively to 2025? And we don't believe that's the case because the cancellation is only recognized on the date that these applications are approved. So if these things get held over until 2026, it's an issue with the IRS, and we're kind of monitoring what's happening here to see if there'll be an update, but in a couple weeks, we should see some stats as to how much progress the Department made before the shutdown in addressing these two backlogs, and we'll be sure to cover that and give an update.

David Tolman:

Yeah, it's very unfortunate for students who are in that position. I understand there would be a lot of anxiety, especially with all the waiting that had gone on prior to this making it worse, A few more things where we'll see some interruptions. A lot of the Department of Education staff has been furloughed, and that's going to affect training and their webinars and their workshops and previously scheduled conference presentations. All of those are not going to be held. They were going to do webinar next week and that will be canceled. So those kinds of trainings, if you have, I know a lot of associations have conferences in October, and if they were going to have someone from the Department virtually or in person, that's probably not going to happen.

Also, just before the deadline, schools were scrambling to submit their completers list, and then we were going to get the draft of those, and the compilation of that is not happening right now. So we won't get the draft completers list until 60 days after the government reopens. And then the other one is website updates. You just might not get... As we mentioned, the Knowledge Center and other places might not get updates if anything were to break, and we wanted that news. So hopefully this won't last long. You would know much more than I would about how long this is going to be.

Hugh Ferguson:

Yeah. I mean, so earlier this year when we had another possible deadline for appropriations, I was under the impression that we were going to enter a shutdown then, and I don't really bet on anything, but if I

was going to, I would've said it would've shut down in March. So as we approached this October deadline, I really was uncertain as to where things would go because I was caught off guard earlier in the year, but in hindsight, I'm not surprised that the government has shut down, and it's very unclear to me how long this will last, but the soonest it could reopen as the time of our recording is that the Senate has a vote scheduled for, I believe, late Friday morning, but there's no expectation that there's going to be a different result from the previous votes on funding measures to push the deadline a little further.

So it seems like we're expecting this to at least go through the weekend, and then after that it's very unclear as to how long it could go or what sort of the pressure points will be to see what kind of deal comes to fruition to reopen things. And another important point to note is that at best, I think we're looking at the government just being reopened and setting a new deadline for when congress needs to deal with the total funding for the upcoming fiscal year to get us through the next September 30th. So yeah, even if the government does reopen, we're likely going to have the same fight again in just a couple of weeks with a new deadline. So yeah, it's possible this could go on for quite some time.

David Tolman:

And the last shutdown that the government had was also the longest one, right?

Hugh Ferguson:

Yeah, I remember that well, because in December they originally had a deal to fund the government, and then it fell apart right after I finished going through a write-up of what was in that bill, and so it was like I'd written this entire thing and then it was like, "Oh. Well, this is now pointless because it's not going to be enacted." So wasted a couple days on that and then just waited for, I think, it was over 30 days of just trying to see what sort of deal they were going to put together then. Yeah, it was quite an exhausting process.

David Tolman:

Yeah, I think I've gotten out that it was 35 days and just from reports I've seen it started with a border wall funding dispute, but what kind of prompted the end of that was the air traffic controllers and a lot of pressure on them and they started calling in sick. So anyway. Thankful to the air traffic controllers. Maybe they'll bail us out again, I don't know.

Hugh Ferguson:

Who knows what the pressure point's going to be this time, but it is all federal agencies are dealing with a lapse in appropriations, it's not just the Department of Education because Congress hasn't finished its work on any of the appropriation bills for this cycle. So it is affecting every federal agency, and it'll be interesting to see if one of those has a pressure point that prompts Congress to reevaluate what it's doing.

David Tolman:

Yeah. Well, we'll see. Hopefully news has completely turned upside down by the time this is published, from the time we record it until then. But just one other thing to talk about, because it is an off-year, an off year for elections, although there might be some that would qualify under voter registration forms, and if there's any federal election, which isn't this year, but if there's an election for state governor or for chief executive in the state, that these voter registration rules apply. So in August 19th, a Dear Colleague letter GEN 25-05 was published changing the use of students who are employed on federal work-study funds and their ability to work on voter registration efforts or other political activities. There

were two prior Dear Colleague letters in 2022 and 2024 that said it's okay for students on federal work-study to work on voter registration efforts, et cetera, but this most recent one changes that. So it's important for schools to be aware of the change in case any of these things apply to you and you are having a statewide election.

So what this new Dear Colleague letter says, in quote, "Voting is a quintessential political activity whereby voters formally support partisan or nonpartisan political candidates by casting ballots," and so because of that, students cannot be involved polling activities. So supporting that process in any way is considered a political activity. It applies whether the student would be off-campus, or whether there's a polling place on campus. Neither one of those is okay. So in addition to voter registration efforts, poll workers, voter hotlines, those are also not okay now for students who are working under federal work-study to be employed in support of such an area. Again, as I mentioned, who does that apply to? Well, whenever there's a federal election and two elections, which include voting for a governor or a chief executive within the state, that's for the distribution of voter registration forms. The prohibition on polling activities applies to any election.

Then some reminders in that Dear Colleague letter about things that schools can do or are encouraged to do with voter registration materials, they can be sent electronically as long as a voter registration form is attached, or the internet address where the form can be downloaded is included on that email. A reminder to schools to send to the extent possible voter registration materials to students who are eligible voters. So if you are aware of students who would be ineligible to vote, it's okay to not include those students in the distribution efforts. And then also a strong encouragement to schools that when they send out these materials, that they are encouraged to remind students of voting eligibility criteria. So in addition to the electronic announcement for the lapse in appropriations, we will include a link to the Dear Colleague letter that explains these things in more detail in case you have any follow-up questions. And that's all I've got for today.

Hugh Ferguson:

That sounds great. Thanks, David. Yeah, it seems like that'll be pertinent, especially to New Jersey and Virginia with their governor races going on for this cycle. But yeah, thank you so much for all that information and talking us through what's going on with the federal government and just getting a sense of where things stand. And for listeners at home, be sure to tune into Today's News where we'll have updates on what's going on and just monitoring what's happening with this stalemate. But once we have more substantive news, we'll be sure to get that out for you. And yeah, stay tuned for another episode of Off the Cuff. Be sure to subscribe and send us your questions and we'll be back real soon.