

NASFAA's "Off the Cuff" Podcast – Episode 347 Transcript

OTC Inside the Beltway: Looking at the Year Ahead for Higher Ed

Melanie Storey:

Hello, hello and welcome back to "Off the Cuff" Inside the Beltway. Melanie Storey, happy to join you again, joined by Karen McCarthy. Lots to cover today, but first of all, happy new year to everyone. I hope that everyone was able to enjoy a restful and restorative break. We are excited to be back and hopeful that this year will bring us some relief, but let's take a minute. Let's talk a little bit about what we here at NASFAA looking at it the year ahead. So a few things. Obviously top of mind is OB3 and the reconciliation bill implementation. We'll have Karen talk a little bit more about the specifics of that, but obviously something we are watching very closely. But one thing that came out over the break a little bit that we've been welcoming and enjoying a little bit here at NASFAA was some signaling from Education Secretary McMahon about the administration, the Department of Education's desire to maybe move away a little bit from their focus on higher education and I think even specifically the Title IV programs and in their plans ahead that they will spend more time focusing on some of their priorities for K-12.

So I think a few things to think about this. First, maybe that's an opportunity for us to have a little breath and to focus on the important parts of implementation for OB3. But let me just say a little bit about the overall context that I think we're working with here. So a lot of what the administration has done so far has been tied up in executive orders and investigations. Now that's of course aside from the reconciliation bill. But a lot of the administration's priorities have been executed via executive order and a number of investigations with individual institutions.

We have a midterm election coming up, and so this is a time where the administration really has more consensus on the hill and where they're able to move things. Although I will note that the margin in the House has diminished some, the Republican majority in the House has diminished some, as there have been some retirements, some people who have chosen to leave the Congress. And so I think there is a real focus from the administration to figure out what their priorities are going to be with Congress because that is where they can obviously via potentially an appropriations bill embed additional changes or additional priorities in statute. But those margins continue to shrink a bit. And then this is a midterm election year. And so timing is short. We're only on in January, but November comes quickly, as we all know. And if the House in particular were to change over to the Democrats, I think we're hearing from the president and from the administration that will potentially really limit their ability to embed their priorities deeper into the law.

So in the absence of that, if they don't have a Congress to support them, there are some other things, and it's largely regulation where I think we will see some embedding. And so, because again, remember things like executive orders, now this is now looking at 2028, but executive orders are pretty easily reversed as we see with every new incoming administration. So that is not as deeply embedded. And investigations can take a long time. They could be long and protracted legal issues, and so again, can often not have long-term impact. So I expect the administration will be looking for ways to continue to embed their priorities deeper into regulation.

And clearly we're already seeing that with the rise and the ahead committees. And again, we'll talk about that, but we've also seen some signaling of some additional negotiated rulemaking or activities coming up this year. So given what we learned late last year about the elimination and finality to the SAFE plan, the SAFE plan was embedded into some regulations. And so I think we would expect the department to have a rulemaking to clean up the regulations and remove the SAFE provisions. We have also heard from the administration, particularly from under Secretary Kent, a real interest in reviewing

accreditation and both who are authorized as accreditors and the kinds of things that accreditors should be looking at on campuses. I think this is a place where the administration really sees opportunity to embed some of their priorities into the accreditation, which of course is required for administration of Title IV aid. So it is adjacent really to our operational work, but really important to watch as our campuses may be seeing changes to their accreditation requirements. So I think we should expect to continue if they can squeeze some time into the schedule, some negotiated rulemaking on accreditation.

But given Secretary McMahon's signaling around K-12, again, maybe that will give us some breathing room, but I expect that this will be a focus. The administration continues to really want to ... Talks about moving education work to the states. That is largely a K-12 area. I think we'll see more than that. On the broader piece, I would expect that we might see some movement on Title VI and Title IX, which again is largely in the civil rights area, but really focused on K-12, but of importance to our institutions as well. So that's some of the rumblings. Congress is still active in their work. Again, it is an election year. So we will also see lots of signaling bills, particularly from members of the House who want to bring things back to their districts and talk about their priorities.

We'll have Karen and talk about appropriations, and we're still of course in flux there. But one thing just to flag for folks, because we will still have Republican-led House and Senate through the fall, there is chatter on occasion about an additional reconciliation package. That of course is what generated OB3. I want to caution everyone not to panic about that. We did see significant changes to our work in OB3, but reconciliation is a much bigger budget process. It doesn't necessarily have to address higher education. We don't have any expectations of more significant higher education action there, although lots of things can happen as they draft those bills and will be looking carefully. But just if you are seeing or hearing anything about additional reconciliation, just want to remind you that reconciliation doesn't mean reform of higher ed. It's a much bigger piece, but there may be an opportunity for Congress to pass one more reconciliation bill, but it would take a lot of negotiation across the House and Senate. If you remember, it took some time. Although it went pretty fast the last time, it does take time to do and they will also still need to deal with their annual appropriations process.

So these are some of the clutch things that we are looking at for the year ahead. Some of it encouraging that maybe we will get a little bit of breathing room, but also just important things to watch surrounding our work. But it is a busy time here in Washington. The next negotiated rulemaking committee's second meeting is ongoing, but I'm going to turn it over to Karen. Say happy new year to you too. Good to see you. Glad to be back here. Let's get some neg reg updates.

Karen McCarthy:

Yes. I know. Doesn't it seem like a lifetime ago? It's like, how do we do this again? And so you mentioned-

Melanie Storey:

What's the first rulemaking? Hold on.

Karen McCarthy:

I know, I know. It does seem like a lifetime ago. And I know that Melanie were trying to be more optimistic and maybe we'll get some breathing room. Well, one of the reasons that we need breathing room is to implement the OP3 bill, which we are in the middle of the rulemaking. I took a look back and the last time that we recorded before the holiday was December 5th, which was right before the Ahead

Committee started their first week of negotiation. So I didn't know how far back in time I needed to go to give the updates.

Melanie Storey:

Let's go to the way back machine. We'll talk about Workforce Pell.

Karen McCarthy:

Yes. Yes. And I was like, have we updated after week one or no, we have not. So week one took place the week of December 8th, and they tackled the topics a little bit differently this time in that they focused exclusively on Workforce Pell largely through week one, and they did come to some consensus at the end of week one on those topics. And now the session that is going on right now, which is week two, the last session, they are focusing on the accountability framework. And so usually it's a mishmash and you do all the topics in week one and then you wrap everything up in week two on all the topics. So they broke it up a little bit differently this go around. So they did come to some consensus around Workforce Pell, the cost of attendance provisions, about packaging were in week one as well. And as we are recording, it is day four of week two. So they've been diving down deep in all the details around this new accountability framework.

They have not voted yet, so we do not know if they will reach consensus by the end of the week yet. So I won't go into a lot of detail on what they're talking about now because it's still really up in the air since they haven't voted, but they have been tackling this new accountability framework for this week. And it's very complex because we have this new statutory accountability framework, but we also have the existing GE financial value transparency regulatory framework. So they needed to figure out what are we going to do with GE, FVT, and still implement what we're required to do under OB3.

And so I heard that David Musser, the federal negotiator, used the word harmonization. So that was the goal, is that they were going to achieve harmonization between GE and the new accountability framework.

Melanie Storey:

Was there singing? Was there singing across the group?

Karen McCarthy:

I don't know, but I liked that word. I was like, "That's a good one. I'm glad we included that."

Melanie Storey:

It's a very gentle way of saying we've got to figure out how to put these things together.

Karen McCarthy:

Yeah. And then also when I was jotting down my notes, the other thing that I was thinking is that they were in some way folding some parts of GE and FET into the statutory accountability framework. And that made me think of that ... Did you ever see from Schitt's Creek that folding it in scene? Just fold it in. That whole ...

Melanie Storey:

Yeah.

Karen McCarthy:

Yes. So in some ways they're trying to get GE, the pieces that they want to keep from GE into this new accountability framework and make it all make sense and be logical, not be a lot of duplication of effort. This administration had stressed that they wanted to the extent that they could reduce the administrative burden, the reporting burden on institutions. So a significant challenge for them to accomplish all of that this week.

Melanie Storey:

Well, we appreciate they heard us on that, right?

Karen McCarthy:

Yes.

Melanie Storey:

Because we very much raised our hand and said, "Can we not have two competing reporting requirements?" But I think there are still some real issues to make sure that everything is covered and assessed properly, which is what they're wrestling with, but appreciate the harmonization or the attempt.

Karen McCarthy:

Yes. Yes. And so I don't want to get into a lot of the details as to what they're hashing out since none of it is final. We have a lot of daily coverage on our OB3 web center. If someone is interested in what did they talk about today and what are the sticking points, you can dive down into that. But where they are, I guess I can summarize with three significant changes, so takeaways of what they've been talking about. One is that the department is proposing to eliminate the debt to earnings metrics. So we will still have what they are now calling the earnings accountability metrics, which were in some way part of the former GE FET, but the debt to earnings metrics they are proposing to eliminate. And there have been some negotiators who are concerned about eliminating that. The department's position is that including it and retaining that debt to earnings metric doesn't really have a lot of practical impact. It doesn't cast the net any wider than most programs that are going to fail under the debt to earnings metrics will fail under earnings accountability. So it's really just extra work for everybody, additional reporting for schools, more calculations on the Department of Ed doesn't really add anything.

Melanie Storey:

Well, and the earnings accountability is in the OB3 provision, right?

Karen McCarthy:

Yes.

Melanie Storey:

So this is where they're trying to.

Karen McCarthy:

Yeah. And so they have to do the earnings accountability, right, because that's in OB3. Yes. And the debt to earnings was exclusively in GE FET, which is regulatory. So they are able to get rid of that if they feel

that the earnings accountability as implemented would encompass all of that. So we do appreciate that. If it's duplicative and extra reporting and extra work on ed and not really capturing any additional programs that are of significant volume, then we, I think would support that.

Melanie Storey:

And we've negotiated the heck out of GE FET how many times now? OB3 is statutory. When I talk about embedding these things, this is a clear example. We'd rather not have two and you've got to lean into the statutory one, right? Because that's a requirement.

Karen McCarthy:

Yep. Great. The other really significant takeaway from this is that under OB3, this new accountability framework impacts only direct loan eligibility. So GE and FET was all Title IV eligibility. So they are-

Melanie Storey:

That's big.

Karen McCarthy:

Yeah. This is only direct loan eligibility, but the other thing that is really big is that it applies to all programs. So like before, we always had the concept of GE programs only, and then if you weren't a GE program, you just had the transparency pieces. So in this case, the metric is a little bit narrower in terms of the impact since it's only DL, but it does apply to all programs that are participating. So the universe of programs is a lot bigger.

And so, and obviously those are like three big takeaways. They've been talking about this exclusively for three and a half days at this point. So a lot more detail to come. There's a lot more on our web center in terms of all of the discussions that they've been having. I did check out our communities to see like how our members are chatting about this and you can always count on our members to keep it real. Because the two biggest questions that I saw there are, what does this mean for our reporting? Because they are concerned about all of the GE FET reporting that they've done in the past. Is this going to add on, reduce, what will it do? And on the reporting side, the good news is that there will be fewer data elements that schools will have to report largely because ed will not be calculating the debt to earnings metrics.

So that will be a positive in terms of reporting burden for the schools. And the other big question is, how soon could a program lose eligibility? So looking out with the timelines, like what are we talking about? And so I did look at the calendar of how this would all piece together. So the first time that schools would do any of this reporting would be 2026 that would be effective because this goes into effect July one, 2026. There would be an earnings test, the results of the metrics that would come out July 1st, 2027. That's the first year. But in order to lose eligibility, the program has to fail two out of three tests. Yeah, another year of reporting the second test would be July one, 2028.

Melanie Storey:

Okay.

Karen McCarthy:

So that would be the earliest that any program would lose their direct loan eligibility. And so then, of course, the next question is, have people done data runs and how many programs would be impacted?

And people have done data runs. We do have some links in our TN coverage, and I think we are going to pull those out a little bit more prominently on our OB3 web center for people to check out. The department did do some presentations to the negotiators because they're always really concerned about what the impact will be. And by their math, only approximately 6% of programs are estimated to fail, meaning would lose eligibility two years out of three. And so there are some clusters around certain types of programs that are more likely to fail, but the impact is relatively low looking at the whole universe of programs.

Melanie Storey:

Yeah. So encourage folks to look at those folks that have done some of these data runs if there's adjustments to be made. And you will have some time and ability to take a look at those metrics because it is, ... Like I said, it's in statute, they will move on these and this will be required. But huge thanks to your team. I know Megan Walter on your team is sitting through some days of negotiated rulemaking. That experience is moments of interest when things are heated up bookended by hours of boredom at times.

Karen McCarthy:

Right. While they caucus and you're waiting for them to come back.

Melanie Storey:

Right. So I really appreciate your team and I know the comms team who then work really closely with your folks so that we can get nightly information out and updates in TN. I know some of this doesn't take effect for a little while, but people are anxious as you saw in communities.

Karen McCarthy:

They are.

Melanie Storey:

People are watching and quickly have questions and so we I really appreciate how much time we're putting to that.

Karen McCarthy:

And I know for those who are super interested in the details, don't want to read all the articles. We do already have an ahead webinar scheduled for our members. I think that went pretty well with the RISE committee after they had consensus, then we had a webinar for our members to get them updated on all of the details. So that is already scheduled for the ahead. So whether or not they have consensus tomorrow, we will do a little bit more digging into the details. We can certainly talk about the consensus that they reached during week one on Workforce Pell, because we know that that is a done deal. And that webinar is scheduled for February 6th, which is a Friday. I'm so sorry. The webinar schedule was really jammed, but we wanted to get this turned around really quickly so people can start to dive into the details of what will be coming.

Melanie Storey:

Great. Yeah. It was hard for us to schedule, but we really felt it was important to prioritize. So we will enjoy spending some time with members on a Friday afternoon.

Karen McCarthy:

Friday afternoon no less. Yes.

Melanie Storey:

Yeah. But what better way to kick off a weekend? Thanks so much, Karen. Obviously a lot of detail. So grateful that we'll have opportunities to share details with members both in writing and in a webinar. We're trying to push it out as quick as we can. So a few other things that came out after our December 5th recording that I think worth noting. So maybe just before really the holiday break, we saw a press release from the Department of Education that FAFSA submissions surpassed five million completions, so before the end of the year. And so that's great news. We share the enthusiasm of the department that FAFSA has really stabilized and five million completions between October one and end of the year is a really notable and laudable achievement. So we're thrilled for that. I would be remiss if I didn't also say that we are continuing to communicate with FSA and with others at the department about what we know and have talked about on previous podcasts, our ongoing challenges with the Partner Connect side of systems at FSA, both for EAP updates and recertifications and other important compliance activities that our members want to be good stewards and make sure they're fully in compliance and make sure that they are timely and getting what they need.

So thrilled about FAFSA continuing to talk with the department about their plans to clear out those backlogs, address those issues, and we'll continue to keep the membership updated as we learn more on that. So some good news and some still work to go, as is always often the case. We talked, I think, briefly last time about the return of the FSA training conference, and of course the department did make their announcement for an in person conference in March and just sent out some save the date information. And we know that there is a lot of interest and we are seeing it in our communities too, questions about what the conference will look like, who will be able to attend. We've heard the facility they have selected will not accommodate as big a conference as an open enrollment training conference would normally attract.

And so I know logistics for planning a conference and the holidays do not necessarily go together. They really wanted to get out the save the date and I'm grateful for them to do that. I know folks are anxious for more information. We're talking to them about it. I would expect we'll see more information if not on the agenda, certainly on the registration and how they're going to address the attendance. I would guess in the next week or two, I know that probably feels hard when we're looking at a March conference, but again, they've got to check all their boxes and make sure that they can do all the things. But I would expect that we'll hear relatively soon. This is really the first week back, just a little inside baseball. Lots of folks have used or lose leave at the department. There's strict rules around that. So I'm sure some folks took some deserved time off over the holidays, but that probably may have backlogged a little bit of the communications. But just encourage everyone to hold tight. I know FSA is working hard on this and I expect we'll see some more detailed information.

We of course will put it immediately out in TN as soon as they post information about registration and any of the other logistics that they have, but just know that there's a lot of interest in that. So circling back to deadlines and shutdowns and time pressures, I'm going to turn it back to you, Karen. Where are we on our just annual budget and appropriations process?

Karen McCarthy:

Yeah. I feel like this topic, I'm always like the Debbie Downer because I know everybody was very excited when the shutdown ended and the government reopened, but they didn't pass a budget and reopen the government. All they did was pass another continuing resolution. And I think that may have

been missed. That people were just so excited, the longest shutdown in history, get everything back open. So they really just kicked the can down the road a little bit until January 30th, I believe it is. So we still do not have a passed federal budget for the current fiscal year that we are in right now. So something will have to happen by that date later this month, or we will have another shutdown, which is not great to think about. So fingers crossed that something will happen. In Congress, there has been some movement on some of the funding bills. There are 12 of them total. So I think this is promising, but not really good news for us yet.

There's a three bill package that the House is supposed to be voting on today and looks like it will pass and would go to the Senate. And if it does pass then that means six of the 12 funding bills have gone through Congress. Unfortunately, our funding bill is not one of those six. So they are making some progress, but just not progress on our bill. And we've talked before, and I know I mentioned this when I do presentations about it, about how our bill is always one of the stragglers because it has so much in it. It's a big one. There's generally some topic area that's a little bit more contentious that slows up the whole process. So it's not unusual that ours would be one of the last ones. So I don't know, good news, bad news. Good news, some progress, bad news, not progress on our bill just yet.

And there are only a few weeks left before the end of January. So as a reminder for our members in particular, there are a couple of options that Congress has. One is get a bill passed. Two is shut down the government. Three is sign another continuing resolution that goes out until whatever date they might think is appropriate and can agree to. So it could be sometimes the CR is just a few days. If they're close, sometimes there are other ... There's all this ... The politics get in the way even in terms of like, okay, we want to do a CR, but then they can't agree on how long they want the CR to be. So it could drag on and on. And last year, as a reminder, we didn't get a final bill passed until sometime in March. So we're in January.

Melanie Storey:

To add to the complexity. So sorry. I don't mean to ... To add to the complexity of that, because if you have a potential of six bills pass, a government shutdown becomes more confusing.

Karen McCarthy:

Yeah. Yeah. It's like partial.

Melanie Storey:

Some of the agencies are funded and moving forward and some are ... And we've had this happen before with the Department of ed, but it becomes even more confusing to communicate with our schools, but also with our students and families. I think most folks are deeply aware that we always expect the Dear Colleague letter with the Pell funding amounts on February one, that's a statutory requirement. The way the department addresses that is to say, use last year's as a placeholder in the CR and we'll update it, but it also means that we have to redo all of that. So January 30 is a particularly difficult date. I hope we can get bills passed and don't see sort of a bifurcated shutdown or ... I know folks are eager to package, right? And everything has to be conditional because we don't have final numbers on max Pell and other things. And so it has real implications for our students and families who are going to be moving into decision dates.

Karen McCarthy:

Yeah. Nobody wants to send an aid package with all kinds of caveats and explaining to people, "We don't have ... Pending federal government approval." All of that. You have to caveat a Pell, campus based aid. We don't know until there's a federal budget passed. It's not great. So a Hoping to avoid that.

Melanie Storey:

Yes. Well, great. Thanks, Karen. I don't think it's that Debbie Downer. This is where we just have to be realistic about what's happening. It is what it is. This is not something we're unfamiliar with. This has been a constant challenge. I don't think we've seen an October bill and I don't know how many years. But we'll continue to obviously follow and keep members updated and encourage, do whatever we can to encourage to get some final numbers as soon after January 30th as possible. But thanks. Lots of exciting things in the new year. More to come, of course. It's again, happy to be back with everyone off the cuff inside the beltway. Thanks very much and hope you have a fabulous week.