

NASFAA's "Off the Cuff" Podcast – Episode 356 Transcript

OTC AskRegs Experts: Working Through Some Professional Judgment Scenarios

Hugh Ferguson:

Hey everyone. Welcome to 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. I feel like I haven't seen you in a bit, but-

David Tolman:

Yeah, it's been a while.

Hugh Ferguson:

Yeah, the weeks keep on rolling by, and yeah, we've been keeping busy these last couple of weeks.

David Tolman:

Oh, I'll say. There's a lot going on, which I'm sure is the same in all the financial aid offices.

Hugh Ferguson:

For sure, for sure. We're back with the episode of AskRegs. I know today's conversation is kind of building off a topic you were focused on last month where you were joined with Norma and discussed some marital status changes. What do you have for us this week?

David Tolman:

Well, often marital status changes as a topic leads to a broader discussion of what is and isn't professional judgment. And so, that's kind of the case. Then last week, I was at Nebraska's State Association conference, and had a good time. Really nice people there. One of the sessions that I did was on professional judgment. I thought, okay, between marital status and some questions that came up afterwards, and then the session we did last week, let's share part of that with the podcast community.

Hugh Ferguson:

Awesome. That sounds great. Marital status changes are something... This is done outside of professional judgment, even though it could result in a change to a student's dependency status?

David Tolman:

Yeah. Marital status changes are an option upfront for a financial aid administrator. Rather than all the professional judgment criteria, it's to address an inequity or better reflect a family's ability to pay.

Hugh Ferguson:

Got it. Okay. If I'm remembering correctly, on a recent episode, you had a now infamous ballad scenario that you guys walked through.

David Tolman:

Yeah. Kind of a goodbye for Tim. The Ballad of Leopold and Segolin. And infamous is right. There were so many more comments on that actually than on marital status changes. We're not going to revisit them today. Maybe in the future, I don't know, but they asked me this at the conference last week and it's like, well, they're married, they're together. We know how the story resolves. Where do you go from there?

Yeah, marital status changes, they're generally done on a dependent student who marries after filing the FAFSA. That was the case with Leopold and Segolin. There are some parallels with professional judgment to doing marital status changes, but it's not professional judgments. It's allowed specifically by law. So you document the decision on how it addresses an inequity or more accurately reflects the student's ability to pay.

Then remember, that example was a dependent student who became independent, but marital status changes for students who started as independent can only be performed during verification, just as a reminder, as a follow-up to last month.

Hugh Ferguson:

Got it. How does professional judgment come into this?

David Tolman:

Yeah. Professional judgment, school has its policies and procedures for assigning costs of attendance, and the Department of Education has its formula where it takes all the income components from the student and parents, ideally their tax return, but a student might, or family, experience special circumstances, or unusual circumstances, or both.

Then the financial aid determines it's appropriate to make adjustments either to the income, the cost of attendance, the dependency status, and a few other things to better reflect those circumstances. It's got to be the data that's used to calculate the student index, or the SAI. We'll talk a little bit more about that: the cost of attendance components, overriding a student's dependency status and denying or reducing eligibility for direct loans.

Hugh Ferguson:

Okay. You didn't mention satisfactory academic progress overrides in that list. Is that intentional?

David Tolman:

Yeah. Satisfactory academic progress appeals and decisions involve a lot of aspects that are similar to professional judgment, such as doing it on a case-by-case basis, needing some documentation to support it, and then determining is this reasonable to make the adjustment, just like professional judgment, but it is not professional judgment to do SAP. We'll highlight some of the differences.

The importance of this distinction is the FAFSA Simplification Act, which adds some criteria around professional judgment, particularly special circumstances and unusual circumstances, neither of which applies to SAP.

Hugh Ferguson:

Got it. Special circumstances and unusual circumstances, they're specifically defined?

David Tolman:

Yeah, that's right. A special circumstance, this is the more typical circumstances that reflect or result in financial changes an applicant or the family has experienced based on what is reported on the FAFSA, or what comes across through the FADDX. For example, a financial aid administrator might adjust the student or parent's AGI, adjusted gross income, due to a loss of a job, or a change to a job with a lower income.

You also have high medical costs the student might incur, and that could prompt the financial aid administrator to make an adjustment to a cost of attendance component to reflect those expenses or to reduce income due to those expenses. Those are both examples of special circumstances. Typically, the FAFSA or the cost of attendance, the need analysis-based side, the unusual circumstances, those are the type that could result in a dependency override.

An example of that would be a complete estrangement of the relationship between the student and the parents, which would be an unusual circumstance where the student shouldn't require the parents to provide the FAFSA data because of the nature of their relationship.

Hugh Ferguson:

Got it. What are the things that financial aid administrators must do in these situations?

David Tolman:

Well, the first one is, if it's professional judgment, it falls under the special circumstances or unusual circumstances, you have to accept those requests, as well as publicize the opportunity for students to pursue PJ requests. This is where there's one big difference because SAP is not PJ. SAP, or Satisfactory Academic Progress Policy, a school has to accept Professional Judgment Appeals, but since SAP is not professional judgment, a school is not required to accept SAP appeals.

But other things that they need to do with PJA appeals, it has to be free. They cannot pay. I think that's long been taken care of, but it's still the case. The decisions need to be done on a case-by-case basis, supporting documentation, supporting particularly the reason for the financial aid administrator's decision, even moreso than the circumstances, the reason for the decision. Then continuing reasons for PJA decisions are still allowed.

A parent might still be unemployed two years into it as we get to the second award year, for example. So as they're using the 2024 income to apply for 26/27, it still reflects a full-time job which has been lost. Even though they might have had that circumstance in 25/26, it's okay to repeat the decision for 26/27.

We have some scenarios that all present situations that may or may not allow the financial aid administrator to use professional judgment to address them. Hugh, you go ahead, you ask the question, we'll pause for listeners to kind of come up with their responses. Obviously, they're not going to be plugging in real answers because this is a podcast and it's delayed, but we'll allow a little bit of a pause and then we'll briefly address each one.

Hugh Ferguson:

Okay, great. Yeah, listeners can just hit the pause button on the playback if they want to take some extra time to think about the answer here. To get us started, David, for making across the board changes, is PJ allowed or is it not allowed?

David Tolman:

Okay. Awkward pause as they think, so hit the pause button if you need more time.

Not allowed. I think most financial aid administrators would agree it's not allowed, but they actually might be done more often than you think in circumstances where they shouldn't. For example, a cost of attendance adjustment where a student is in a lab class that has some expensive equipment that they need to buy for that lab, and it's not accounted for in the cost of attendance because the cost of attendance is based on an average.

So you think, okay, well, this student has higher than the average cost, so we'll go ahead and make that adjustment. But an across the board change would be, well, is that unique to the student? Is that circumstance unique, or does it affect a category of students? If the student has that expense because they're taking a class, well, then everybody who's taking that class is going to have that same expense.

It's done though quite often, but it has to be based on a reason other than they're taking this class because they're not the only ones that... It's an across the board change. The way to deal with it probably is to say, okay, in our cost of attendance policy, we're going to make an allowance, or anybody who's taking this class, we're going to automatically increase their cost of attendance.

Then it's dealt with by policy because it's affecting a whole group of students. Making across the board changes is not allowed. That's our first one.

Hugh Ferguson:

All right. Onto the next one. Changing data elements used to calculate the SAI, is PJ allowed or is PJA not allowed?

David Tolman:

Income adjustments, for example, is a data element and those are allowed. The data elements used to calculate the SAI, those are the FAFSA fields: the income, family size, taxes paid, assets, all of that. Those are allowed. What you cannot do is to change any of those intermediate values in the federal methodology, such as the tables.

It's like, okay, income protection allowance protects this percentage of income for medical expenses. You say, "You know what? I don't think that 11% is enough. We're going to protect 20% of their income, and we're going to adjust their income protection allowance." That kind of a change cannot be made, but that's not a data element.

The data element is, okay, they've got this medical expense, let's reduce their income by the amount of that expense because it's not income that's otherwise available. That's okay. Those aren't. The income adjustments are.

Hugh Ferguson:

Got it. Okay. Next up, we have making a bottom line adjustment directly to the SAI.

David Tolman:

Okay. This would be the type of situation where the financial aid administrator might say, "This student really should have a full Pell, so their SAI should be negative 1,500, or zero, or we should reduce it by 500." That is not allowed. Pretty well understood, but we've got a lot of people that are new to the financial aid community, so just know you cannot make an adjustment directly to the SAI.

You can adjust those income components, and tax components, and others to see if it will result in a change to the SAI, but you cannot change the SAI directly.

Hugh Ferguson:

Got it. Next up, we have changing a student's dependency status from dependent to independent.

David Tolman:

Okay. That is allowed, and that's the whole purpose of the category of unusual circumstances. We'll make that a short explanation because the other one might not be as commonly known.

Hugh Ferguson:

Got it. Okay. Now I'm going to make sure I enunciate correctly on this one because it's the inverse of our previous scenario, but changing a student's dependency status from independent to dependent.

David Tolman:

That one, you're right, it's the inverse. It's not allowed. You cannot use professional judgment to change a student's independent status to dependent, no matter the circumstance. Circumstances do occur, but those changes will be reflected the next time the student submits the FAFSA. They go through the dependency status questions. If they can't answer yes to any of those, then they will be considered dependent the next year.

But within an award year, once they've filed and the change happens after they file, it's not a correction, but change. You cannot make dependency status changes in that direction, just from dependent to independent.

Hugh Ferguson:

Got it. Then next, we have refusing or reducing a student's or parents' direct loan eligibility.

David Tolman:

Maybe pause a little bit longer on this one.

It is allowed. Schools are reluctant to do this. It could be the school's policy that we don't do this, but that's the school's policy. It's not what's allowed by statute. And not only is it allowed by statute, it's also addressed in the direct loan regulations. For those who love their regulations, it is 34 CFR 685.301A8, and we can link to that.

The determination to reduce or deny the student or parents' direct loan eligibility, we could do a whole podcast just on this topic, but the determination needs to be made on a case-by-case basis. This is professional judgment. The documentation supporting the determination of the financial aid administrator needs to be maintained in the student's file.

Then finally, if the school does this, it needs to show it doesn't engage in any pattern or practice that results in the denial of their access to direct loan funds as a result of a protected category, such as race, gender, color, religion, national origin, age, disability, status, or income, or any other laws that might apply to the school depending on where they are.

All right, that was six questions. If you answered six out of six, you are a PJ Pro. If you answered four to five, you are a PJ Basic, and if you answered three or less correctly, it's probably time to brush up on PJ. That was today's fun, not a fun story, but a little quiz.

Hugh Ferguson:

Yeah. So everyone can score themselves and see how they did. It'd be interesting to see if you need to take the test again to see if you do better the next time.

David Tolman:

Yeah.

Hugh Ferguson:

Yeah. Great. We've talked about marital status changes and SAP appeals not included as professional judgment. Are there others that are sometimes mistaken for PJ?

David Tolman:

Yeah, there are a few unaccompanied homeless youth determinations. Those are not professional judgment. Or if the student qualifies, then there's the process for determining that, but it's not professional judgment. IRA rollovers, there are instructions. If there is a rollover, it's not a professional judgment decision as to whether or not you're going to exclude it, you exclude it.

Then adding additional cost of attendance components is also probably the one that's most commonly mistaken for PJ when it's not.

Hugh Ferguson:

Got it. Then can you describe the additional COA components?

David Tolman:

Yeah. There's a list of categories and statute that are allowed, and there's some that are assigned to all students because they all, in most circumstances, incur those costs: tuition and fees, books and supplies, food and housing, the miscellaneous personal travel. Those are the standard components.

But there are additional components that are also allowed, but not every student probably incurs these costs, but the students who do need to have this included in their cost of attendance with documentation. It's not a professional judgment decision. It's just determining whether or not they have the expense. Those include the categories like study abroad expenses, disability-related expenses, dependent care allowance, the licensure certification or credential fees, and cooperative education expenses.

Those are all in the same category as loan fees. We don't question, if a student has the loan fee, it needs to go on their cost of attendance. These are also the same. It's not a professional judgment decision, so it doesn't need to go to a committee. It doesn't need to go to staff who are designated professional judgment decision-makers. It can go to staff that process cost of attendance changes.

So adding those alone, that's not professional judgment, but if the school's going to depart from its policy on assigning cost of attendance components on these or the standard cost of attendance components, that's where we run into PJ. If the amount is... This is kind of special here, they're asking for kind of double the amount that we allow for dependent care expenses, are we going to allow that? That would be professional judgment.

But if it's somebody who qualifies for dependent care under your policy and you've got documentation that can support that addition, then go ahead and add those. And so by nature, it's case-by-case, and as a result, documentation is required, but you are more documenting the decision.

You don't have to have them prove the exact amount unless that's your policy to do so.

Hugh Ferguson:

Awesome. Well, that was all really helpful information, and I'm sure people will want to re-listen to this episode to catch up on some of those scenarios that they can walk through again. Are there any additional resources that you wanted to highlight, David?

David Tolman:

Yeah, we'll put those in the notes. There's certainly some AskRegs articles as well as the regulatory reference for denying or reducing alone. We'll put that in there as well.

Hugh Ferguson:

Awesome. Well, thank you so much for your time today, David, and thanks to our listeners for tuning in. We hope this was some helpful information for you all. We'll be back with a new episode next week, and be sure to send us your questions and comments and let us know if there's anything you're interested in us covering, and we will talk to you again real soon.