

NASFAA's "Off the Cuff" Podcast – Episode 367 Transcript

OTC Inside The Beltway: Making Sense of OBBBA Lawsuits and the House's FY 2027 Budget Proposal

Maria Carrasco:

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Melanie Storey:

Hello, hello, hello, and welcome again to Off the Cuff Inside the Beltway edition. I'm Melanie Storey and I am joined today by Karen and Nalia and we have a jam-packed agenda. So super excited to share a lot with folks today. We're going to start in an area that we don't spend often a lot of time focusing on, but that is sort of the state of play around policies in our world in the courts. There are a number of lawsuits that have been filed or that are ongoing related to our work and so wanted to start there today. And I think Karen, I'm going to turn it over to you. Can you just spend a little bit of time giving some high level about the variety of legal activities happening in our world?

Karen McCarthy:

Yeah. This is happening at a pretty quick clip, I would say also. We just saw the RISE final rules come out last month and we have since that time seen three separate lawsuits that have been filed that challenge parts of the final rules related to the student loan provisions in particular. And the three that were originally filed, one was filed by 25 different states. Those states skewed towards blue states, but they're not all blue states on that particular lawsuit. The second was filed by several organizations representing the nursing profession. And the third was filed by the American Academy of Physician Associates and the PA Education Association. So they represent the physician's assistants profession.

And ultimately the second and the third, so the nurses and the PAs, those lawsuits were consolidated into one lawsuit. So there are now two, but that doesn't mean that anything got dropped or anything was resolved. Just two of those lawsuits consolidated into one. So we have two lawsuits right now on the student loan final rules.

Melanie Storey:

Wow. Okay.

Karen McCarthy:

Yeah. So let me-

Melanie Storey:

That's super clear.

Karen McCarthy:

I know. So the primary issue in the lawsuits is the professional degree definition that has gotten so much coverage and some backlash among certain professions where they were not included in the list of the professional degrees that ED negotiated during the negotiated rulemaking process. And we have had for quite some time a definition of professional student and graduate student in the rules, but it really didn't carry any significance because graduate students and professional students had the same exact loan limits. And so it wasn't really used for any purposes related to loan limits. And as we know with OB3, we have separate loan limits for graduate programs and professional programs. And so now it is much more significant whether you are a graduate program or a professional program.

And so what the lawsuits are about are the way that ED went about defining, in neg reg, how a program is to be considered a professional program. So what they are saying that ED got wrong in the basis of the lawsuit is that ED added on additional criteria to the definition that went beyond what was mandated and required in the One Big Beautiful Bill Act. So they exceeded their authority in some way by adding additional criteria for what's considered to be a professional program, which narrows the definition and means that fewer programs qualify for those higher loan limits. There is also, got a little bit less attention in there, in the first lawsuit by the 25 states, they also included in the lawsuit an objection to the requirement that a student, any student, be continuously enrolled in order for them to continue to maintain eligibility for the interim exception to the loan limits.

So there is a requirement that students in order to continue to be eligible for the current loan limits, in particular graduate plus eligibility, they have to be enrolled in a program as of June 30th. They have to have received a direct loan and then they can continue for a certain limited period of time to say, for example, receive graduate plus.

And in the rules, ED added a qualifier in there that the student has to maintain continuous enrollment in order to maintain their legacy eligibility. So if a student had to, say, take some time off or take a semester off, drop out for a medical reason and then come back, they would have... I think the term that I have heard used sometimes in presentations is break the grandfathering, meaning they are no longer eligible because they are not continuously enrolled.

And there was not any language about that in the One Big Beautiful Bill Act. So in the lawsuit, they're saying that ED exceeded its authority. This was not a mandate by Congress. So why did ED go as far as it did and mandate that continuous enrollment? So there are those two things, the definition of the professional degree and the requirement for continuous enrollment that are at play.

Melanie Storey:

Got it. And of course, we've talked about this in previous podcasts, but there's also activity in Congress specifically around the definition of professional degree. So lots of activity happening in this area, but focusing on the lawsuits themselves, break out your crystal ball. What do you see as the potential outcomes, but how does the timing of this work? We've got multiple suits, kind of slightly different approaches, different programs, lots of things here, but we are also at time of recording 20 days from July 1. So how do you see this kind of playing out? What do you see in terms of outcomes and the kind of coordination with the July 1 implementation?

Karen McCarthy:

Yeah, there's a lot that we don't know here in terms of the timing and how the court might choose to proceed. There are multiple lawsuits. So one court might act first in one of the lawsuits versus the other. Both of the plaintiffs ask for the courts to either vacate the provisions, meaning completely, the rule is unenforceable, would apply across the board nationally, or to issue a permanent injunction on these

specific provisions of the regulations. So what we have seen recently is that injunctions will likely only apply to the plaintiffs, not be on a national basis like a vacation, if the court decided to vacate.

Melanie Storey:

Vacating, yes. Not quite the vacation any of us are looking for.

Karen McCarthy:

I know. So that has the potential to get really messy if we are in the injunction space and where it applies, if it's not across the board. So you could have different sets of rules applying to students at different institutions in different states if we're talking about the state lawsuit that ultimately ends up having this decision. So it's really, really up in the air in terms of what might ultimately end up happening.

And it could also be that the court could vacate or issue an injunction just portions of the rules, in which case what would be effective would be the old rules but not any new rules that the court might have scrapped. We did also as part of the nursing and PA lawsuit, they did request a temporary injunction, which is a little bit, I think of it as like a short term kind of emergency request. Can you just issue this temporary thing to put the rules on pause until the court is able to fully consider in the future?

And that would give us, basically buy more time, give us a little bit of a temporary holding pattern until the court can fully consider the case. But a lot of this, we just don't know how quickly the court would consider any of this. As you mentioned, how many days did you say? It's 20?

Melanie Storey:

20, 19. Depends on how you want to count for us, but yeah, less than three weeks.

Karen McCarthy:

Yes. Until July 1. And so it's really tight. I think the only chance of anything happening by July 1 is if there's a decision on the temporary injunction, because that's considered to be kind of a short term decision. We likely are not going to see either of these cases be fully heard by a court since it's already so late into June. But yeah, the timing and all of the different combinations of the possibilities all completely up in the air right now.

Melanie Storey:

Yeah. I know and just acknowledge how this sort of adds to that feeling of uncertainty that I know all of our members are dealing with, but for now we're just going to have to be patient, take a deep breath. One thing just might be sort of a question that folks might have is why did it take so long? I mean, we've known at least a bit about what to expect on this since the draft rules and quite frankly, because they reached consensus. We had a lot of information relatively quickly at the end of the negotiation. Why nothing legally until we are at the 11th hour here?

Karen McCarthy:

Yeah. I think the lawsuit can't be filed until ED actually officially issues the rules. So that doesn't happen until the posting of the final rules, which just happened last month. So the lawsuits were filed pretty quickly after the final rules were issued. Everybody was expecting, we know the department was expecting lawsuits because they worded it that way in the final rules to allow things to move forward if

they happen to be sued, but the actual filing of the lawsuit can't happen until the final rules are issued in the federal register.

Which kind of brings us back around to the master calendar conversation that we've been having and the fact that the timeline is so tight that if we were following a master calendar and we had rules by November 1, there would be, I mean, assuming that all of this was the same and there's still lawsuits, but a lawsuit were filed in November, then there would be more time for a court theoretically to issue a decision on the lawsuit before we were crashing up against July 1, but we don't have that time this go around.

Melanie Storey:

You don't. But yeah, I mean, it is a good point to make though that master calendar is important from an implementation standpoint and we think about that in terms of our financial management systems and sort of all of that and the work on campuses, but it also just gives more time to sort of resolve maybe some of the questions, whether they are in the courts, but sort of some of the more complex legal questions about whether or not the intent of Congress was fully, I don't know, recognized by the department in the rules that they wrote.

So another plus one for us to hold to master calendar in the days ahead, but that isn't where we are here and we will continue to keep folks updated, but just thanks. I think it was... We don't spend a whole lot of time sometimes talking about the lawsuits, but we do track them carefully, try to get information out, particularly if we do see injunctions or anything that will affect the work and timing of our members on campuses. So I think it's just important to acknowledge, explain and say we're keeping a close eye.

Let's pivot over to another aspect of the... We talk about the judicial branch, the administrative branch. We'll go back over to the legislative branch and talk about budget. I didn't do any chitchat at the top of the hour today or the top of the podcast. I feel like we're all barreling toward conference and kind of getting down to business. So apologies for that. So hi, Nalia. How you doing?

Nalia Medina:

I'm good. how are you?

Melanie Storey:

There was no soft chatter upfront today, but I know you have been deeply enmeshed in all things budget. So give us an update on what's happening there.

Nalia Medina:

Yeah. Happy to give a quick update. As folks might have seen, about a week ago, yeah, I think today the House, Approps Committee did release their budget request for fiscal year 2027 and do just want to remind folks kind of right off the bat that what we're talking about today is just a proposal. We saw the Trump administration budget request several weeks ago as well, but nothing is final. These are just requests at this point. We're still waiting for Senate numbers as well. So this process will likely continue for the following weeks and months to come. So just wanted to give folks that kind of quick reminder.

But in terms of the House proposal that we saw last week, some of the key takeaways that kind of jumped out there. I'll start with Pell. I feel like that's kind of top of mind right now, especially given a projected shortfall. We'll talk about that in a minute too. But in terms of the House proposal, that did request a \$50 increase to the maximum Pell Grant award. And when you compare that to what the

Trump administration requested, they actually did not request an increase to the max award. So just a little difference there.

And it also does address the Pell shortfall. So as folks might know, CBO is projecting a nearly \$17 billion shortfall for the Pell program by the end of fiscal year 2027 and the House budget request does propose adding over \$15 billion to address the shortfall. It does so by eliminating funding unfortunately for the subsidized loan program. So if enacted that would begin July 1, 2027. Won't spent too much time kind of in the details there, but eliminating that funding would essentially cover the Pell Grant shortfall. And so while we were happy to see Congress address the shortfall, we wouldn't want to see them kind of cut other necessary need-based aid programs to do so.

In terms of other kind of key takeaways from the budget proposal in terms of campus-based aid, the request does cut funding for federal work study and FSEOG, though not as steep as what the Trump administration requested. So the House for FSEOG is requesting \$546 million, and for federal work study, they're requesting 908 million. The Trump administration did propose eliminating SEOG and it's not the first time they've done so. That's happened in previous budget requests as well. And then for federal work study, the Trump administration, as a reminder, is requesting 123 million for federal work study. So the House proposal was definitely not as steep as what we saw several weeks ago with the House proposal. And then just some other things that kind of jumped out, some increases to the federal TRIO programs, to GEAR UP and the Trump administration did propose eliminating funding for both of those programs.

And then actually just earlier this week on Tuesday night, very late on Tuesday night, Maria was following until very, very late and then I kind of followed yesterday morning. So the House Appropriations Committee did advance the bill in a 34 to 28 vote and some things that kind of came out of that, we did see a bipartisan manager's amendment adopted by the committee and that included a provision that would reclassify the advanced nursing programs as professional degree programs.

So that was adopted by the committee and another amendment that we saw that was not adopted by the committee was an amendment offered by Representative Dean that would remove that provision in the bill that would terminate the funding for the subsidized loan programs. But again, that amendment was rejected by the committee, so it didn't make it into the final. And at this time, the bill's moving to the House floor for consideration, but again, the timing is still unclear right now in terms of when they will do that. And then we are also just kind of on standby and on the lookout for the Senate numbers to hopefully come out at some point in the next few weeks.

Melanie Storey:

Thanks. So just a couple of process notes. So is the expectation that whenever the floor vote happens, we would expect them to, at least on a party line, pass what they have in front of them, right? Is that a fair expectation, but we would expect different numbers from the Senate and then as always there's negotiations to try to fix that.

And I know we're not going to get too into the weeds on the subsidized loan program, but just for clarity's sake, if that provision were, they propose that provision to address the shortfall on the Pell Grant program, but that's still just a short term solution for the existing shortfall, right? That would be a one-time elimination of an expense, the cost of the subsidized loan program. It would address the immediacy potentially of the shortfall, but the truth is we've continued to expand eligibility for the Pell Grant program. And so is this just another sort of kicking the can down the road and we may would likely be addressing shortfall issues again sometime in the future?

Nalia Medina:

Yeah, I think that's a fair question. And throughout the last few weeks and months when this has kind of become really top of mind, we've been engaging in a lot of like Hill meetings trying to advocate for the Pell Grant program. And one thing that we were urging folks on the Hill was A, to not cut the maximum award, which we saw that, which was good at least, and to not make any changes to eligibility.

But one thing that we were really emphasizing in those meetings is that we're happy to see the expanded access to the Pell program through the passage of the FAFSA Simplification Act. But like you mentioned, Melanie, this is kind of like a short-term solution right now and we want to look long-term to ensure that Congress is fully protecting the program so that we're not at the same place 5, 10 years down the line.

Karen McCarthy:

Yeah, I mean, not only would it only temporarily fill the shortfall, but now we've lost a whole subsidized loan program permanently.

Melanie Storey:

Oh yeah, that's why I was like, I don't want to even get into the consequences of losing the subsidy for the loan program.

Karen McCarthy:

Forever. Yeah.

Melanie Storey:

We could do 20 minutes on that, right? But just I guess this is my always leaning into my plea to do a more comprehensive look at the challenges we have, some of the misalignments that have happened in the AGA, with the FUTURE Act and other things, like that we haven't done a proper reauthorization to sort of reconcile how all of these programs interact and how we fund them, but also the fact that the Pell Grant program is an incredibly important and successful program and we appreciate the largely bipartisan support for it, and that there has been an expansion of eligibility because we do see it as a core access program, right. Workforce Pell expansion through FAFSA Simplification, but it is resulting in a budget challenge year after year.

So what is the solution? Let's talk about a long-term sustainable solution for funding the Pell Grant program. So I guess I see these and I appreciate that Congress is at least recognizing the problems and maybe looking for solutions, maybe the eternal optimist in me just always wants to use these challenges as a way to think more comprehensively for solutions and not just cherry-pick a program off that then we lose and it solves the problem for another year or two, but we're still going to have this problem and we still have millions of students to serve in '29 and '30 and '31 and so on. So just kind of think that's a important piece to pick out. These are good conversations. I continue to hope we can have a more robust and comprehensive conversation on how to solve these challenges.

Karen McCarthy:

I do kind of wonder, I kind of think of this, the shortfall as Congress needs to put its money where its mouth is because they passed the FAFSA Simplification Act. But I do wonder, one of the stated goals of the FAFSA... This isn't like an unintended consequence of the FAFSA Simplification Act. This was one of the stated goals was to expand Pell eligibility and higher amounts, more eligible students, that whole thing. So I wonder if there were... I mean, they're different, the authorizers are different from the

appropriators. So I mean, it's not like this problem couldn't have been anticipated that if we're going to expand eligibility, how are we going to pay for that? But that is a little bit of the right hand and the left hand I understand.

Melanie Storey:

This was a feature, not a bug. This was an intentional development, same important part of like Workforce Pell and all, the support of Workforce programs with Pell, again, bipartisan support. Including NASFAA, right? We see these tools, but you can't just sort of expand the program without funding it. And cutting the program at a time when you are expanding it is in direct conflict to the goals. So it's just something I continue to think about at night, which doesn't say good things about me. But anyway.

So thanks, Nalia. Super helpful. We know there's still a long way to go and while the budget technically should be wrapped up by October 1, that is probably a pipe dream for all of us. But again, we'll see. In election years, you never know. Things either go very fast or very slow depending on how the members are feeling as they go back to their districts for reelection in a midterm year, particularly in the House. So many more twists and turns to come, I suspect.

Let's see. One more kind of more technical issue I think, Karen, I know we put some information in Today's News, in TN, but do you want to just spend a minute talking about the information from the department on the comment code 352, the ever popular 352 discussion?

Karen McCarthy:

Yes. I can give a brief update on this. I know that last week, I believe it was last Friday, we released an Off the Cuff podcast that had all of the nitty-gritty details of this issue and what the issue was. So if anybody is not up to speed on the issue, then I would refer you back to that Ask Greg's Off the Cuff where Jill went into a lot of detail on that.

But basically in late May, the department instituted some changes in their systems where the COD system was estimating who would be eligible for the legacy loan limits and was setting a loan limit exception flag as an indicator. This is who we think will still qualify for the old loan limits. And associated with that flag, there was a comment code and it was comment code number 352. So that's why we refer to it in that way, as a flag for institutions to take a look at these students and make determinations of the actual legacy eligibility.

And I think that part of the confusion is that aid administrators use comment codes to resolve lots of problems. And I think on the systems side, FSA was trying to a little bit use that existing comment code system to do this new thing. And it caused some confusion because this is a new thing, but we're not following the same rules as we do for other comment codes. So there was some confusion as to how aid administrators were expected to proceed because comment codes are blockers and will block things from happening. It's a problem that has to be resolved. So schools had lots of questions about why are you doing this? What am I supposed to do? Do I resolve it? Do I leave it? How do I get the loan through if I... All of those things. Can I update any of these things?

And so we and lots of institutions had lots of questions of federal student aid and that is kind of where the very high level description of what Jill covered in a lot more detail in the Off the Cuff podcast last week. And so just as an update, earlier this week on the 9th, the Department of ED pushed out an electronic announcement that they heard all of the concerns and they were changing course.

And so what they said is update schools do not need to resolve these comment codes. They will be reprocessing to remove the codes for schools. And I believe that reprocessing was starting today and so schools should start to see those reprocessed ISIRs in the coming days. They tend to roll out gradually.

And they will be resetting the logic on their backend so schools won't keep seeing these flags. So there was an issue, we gave some feedback, ED was responsive to that. They issued an update on Tuesday. So if you miss that electronic announcement, definitely take a look at that.

Melanie Storey:

Great. Thanks. Yeah. I mean, I think this is one of those things that it's just good intentions with unintended consequences that see flags, have to be resolved, so you can't just disregard. And most of the systems, if not all of them, will not allow you to move past a flag if it exists there. So it sort of was a big challenge, but super appreciate everyone sending their questions, the communication with the department and the partnership and willingness to kind of review it and come up with a solution that can kind of work for them and work for folks. So everyone should be looking for some reprocessed ISIRs.

Karen McCarthy:

Yeah. And all of that, I mean, that happened pretty quickly that there were all these questions. We were able to raise them. ED was receptive to the feedback. They were able to do whatever it is that they have to do behind the scenes to decide how they're going to move forward and issue this update just on Tuesday.

Melanie Storey:

Yeah. So, great. And hopefully relieves a little bit of the pressure on a lot of things happening on campuses and in aid offices to get ready for the many changes, the schedule of reductions, all of the things that are taking a lot of time right now. So I think we're going to wrap today. I just want to say a little bit about, as I kind of alluded to earlier, as we head toward the 2026 NASFAA National Conference, we are super excited to welcome lots of folks to our backyard, to National Harbor at the end of this month and to be together as we turn the calendar over to July 1. It is a very timely meeting.

And I know it is a challenging time and I think it's important to acknowledge how difficult and challenging it can be on campuses, but we are thrilled to welcome so many people to the conference and I don't think we should preclude celebrating NASFAA's 60th anniversary, our history, our community and our commitment to our students. So it will be a really, I hope, nourishing and celebratory time to be together. We have lots of practical policy and party plans. A few things to... Going with my alliteration. I'm going with my alliteration today.

On the professional development and practical side, we've got great sessions on AI and financial aid audits, budget, systems, and of course all of the interaction with our amazing partners in Innovation Hall, lots of opportunity to talk to systems folks, vendors, all of the people that support our work. On the policy side, of course, sessions on federal funding, financial aid offers and transparency and some of the things happening here in Washington around that, emerging trends in higher education. We're going to have the Office of Inspector General there. And of course, always ever popular will be the NASFAA Open Policy Forum where Karen and her team and I will be there to answer all of your questions, take them in real time and provide all of the answers that we can. It's really just always nice to interact directly with everyone.

And then we're going to have a little bit of a party. It's our 60th anniversary. I do think it's just a cause for celebrate, cause to celebrate NASFA, cause to celebrate our members and the millions of students that we serve every year and for 60 years past and for all of the years ahead. Lots of fun activities. Every year we do have some charity events. Of course this year we do have our charity 5K and trivia and Topgolf. We always have DJ Shawna, who is ever popular every day to keep the energy up and kind of

bring a celebratory atmosphere to it. But because it is our anniversary, we have a few other special things planned. We're going to have some fireworks, which is always kind of fun.

And then we're just going to have this amazing kind of, I call it three tier, but kind of three room, three themed party celebrating our 60th anniversary on July the 1st. We'll be together. I say it all the time, but the strength of our membership and the work is our community. And so I'm so pleased that even amidst a time of real challenge and hard work, I hope we can kind of shake that off. No Taylor Swift needed there, but for a little bit and really enjoy and celebrate each other and our work together. So bring your golf shoes for Topgolf, bring your dancing shoes for the party and we are really excited and looking forward to seeing everybody at National Harbor.

Now that said, for those of you who are not able to join us, fear not. There are also opportunities for the practical policy and party in our virtual summit, which follows the in-person conference. The virtual summit runs from the week of July 13th, from the 13th to the 16th. Professional development and practical wise, there's a great credentialing opportunity around cash management. There'll be a session on schedule of reductions, which I know is very important. There'll be some policy sessions. I'm going to host a conversation on the future of financial aid. Stay tuned about that conversation and of course another NASFAA policy session there.

And then maybe not quite the same as the National Harbor party, but Blue Icon will be hosting a Let's Talk, which is a really member-generated conversation. It is a great time for folks to be able to come together and elevate questions and share with each other best practices and how we are solving our challenges on our own campuses and share that together. So again, if you're not able to join us in National Harbor, I hope that you are open to joining us at the virtual summit in July, but in the next month, lots of opportunities. Personally exciting for me. I love the opportunity and the energy to interact with all of you and to hear from you and to share with you.

And so this is our last Inside the Beltway Off the Cuff until the conference, unless there's any late breaking news, but hopefully, hopefully not, that this will be our last episode before we welcome you all to DC. So thanks everyone for joining today. Thanks, Karen. Thanks, Nalia. I know very meaty and lots of information, but thanks everyone. Have a great kickoff to summer and we'll see you soon. Take care.