NASFAA's "Off the Cuff" Podcast – Episode 278 Transcript

OTC AskRegs Experts: Updates on Student Debt Relief Neg Reg and the FAFSA 24-25 Contributor

Allie Arcese:

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Hey everybody. Welcome to another episode of "Off the Cuff." I'm Allie Arcese, NASFAA's director of communications.

Jill Desjean:

I'm Jill Desjean with NASFAA's Policy Team.

David Tolman:

And I'm David Tolman with Training and Regulatory Assistance.

Allie Arcese:

Welcome everyone. Another Ask Regs episode. We're going to get into some weedy things. We're going to do an update on this latest session of negotiated rulemaking that just wrapped up on student debt relief. And then we're going to get back into our Fun With FAFSA series with more information on the surprisingly confusing contributor, at least to me, surprisingly confusing contributor aspect of the new FASFA. But before we get into that, it's November already and almost mid-November. I was looking at my calendar trying to figure out when moving meetings around and I was like, oh, we have a couple of weeks before the holidays, but we don't. Next week, is it? What's everyone doing for Thanksgiving this year?

Jill Desjean:

I'm headed down to Kiawah Island of South Carolina, super random. Just I have friends who I always travel with over Thanksgiving and we just sort of find a place that works for everyone. Used to be Europe pre-pandemic, haven't quite gotten back to that, but at least we're-

Allie Arcese:

That's fun.

Jill Desjean:

... Moving out of Maryland. So that's exciting. Yeah.

Allie Arcese:

That sounds like a great idea.

Jill Desjean:

Yeah.

Allie Arcese:

What about you, David?

David Tolman:

For the winter holidays, that's when I'm off. Everybody's going to come home. I've got one son here and then a daughter who's in college, and it'll just be the four of us who are here. So I'm looking forward to a really nice, quiet, relaxing Thanksgiving.

Allie Arcese:

That sounds amazing. We're heading down to Virginia Beach to see my husband's family and I don't know what it was like for you guys, but for me growing up, Thanksgiving was never a really big holiday for my family, but my husband's family is the exact opposite. So it's just fun seeing the difference in that. And then we're staying here for Christmas for the first time. It's going to be my daughter's first Christmas at home.

David Tolman:

That will be nice.

Jill Desjean:

That's nice when the kids are little.

Allie Arcese:

I already vetoed the idea of an elf on the shelf though.

Jill Desjean:

Yeah, don't like the elf.

Allie Arcese:

I was like, "I'm not ready for that commitment." I don't know if I ever will be.

David Tolman:

Our elf on the shelf started appearing when my daughters were old enough to tease their youngest brother with it, and they were very creative.

Allie Arcese:

Oh, like prank him?

David Tolman:

The Legos and the elf had an ongoing war through the month of December. He'd wake up and see that the Legos had locked him into a bubblegum machine, but sometimes the elf on the shelf grabbed some of the angels off the tree and they were all having a picnic together. They were very creative.

Allie Arcese:

If you have older kids to help out with it, that makes it more manageable.

David Tolman:

They could do what they want. Yeah. Otherwise, I agree with you. They didn't have on the shelf, so they're giving their little brother a tortured experience with it sometimes waking up on his pillow.

Allie Arcese:

Oh no. Oh my gosh. Well, much to look forward to this year. Let's go ahead and get into it. I know we've got a lot to cover. So Jill, we just wrapped up the second session of neg reg on the Biden Administration's latest attempt for student loan debt relief. What is new since the last time we talked about this, which I guess was about a month ago?

Jill Desjean:

So first up, negotiators saw proposed regulatory tax for the first time. The first session was really sort of our brainstorming session. So the department came to them with questions and really just said, "What do you think about all this?" But they didn't have any text to go by. And so this time, a week before the session started, the department sent out some redline text indicating the direction that they want to go with actual language as opposed to just this. Let's just think and talk. ED took, of course, what they heard from negotiators in that first session and they crafted that regulatory text for them to discuss this time around.

Allie Arcese:

And what did they come up with?

Jill Desjean:

So what the department's proposing is a series of sort of conditions which if met would result in the borrower getting some form of debt relief. And this isn't surprising, this is what they were talking about in the first session where the broad scale debt relief was struck down by the courts. They knew they couldn't go that path anymore. And so they're looking to target populations of borrowers because they seem to think that that is their more legally safe path to go, if they can identify groups of people who are exceptionally struggling under the burden of their student debt. So some of those conditions that would result in a one-time cancellation event, but just with narrower eligibility criteria.

Allie Arcese:

Rather than just the income parameters?

Jill Desjean:

To give them kind of extra thing that says you're struggling.

Allie Arcese:

So what are some of those criteria?

Jill Desjean:

So they came up with either having been in repayment for more than 25 years, or having a loan balance that's higher than what you borrowed due to accrued interest on the loans. Those would be one-time events. So just similar to what they were going to do last year, they would say on, it would be shortly after July 1st, 2025, the way the language is written, if as of July 1st, 2025 you've been in repayment for more than 25 years, or your balance was higher than what you borrowed due to accrued interest, your debt would be forgiven. That sounds like a pretty simple thing, but of course the reason neg reg exists is for experts to sort of poke holes in the proposal and try to craft language that truly accomplishes what the goal is. And so just for example, 25 years of repayment, that should be a really easy thing, not necessarily.

Allie Arcese:

Right. If there's stops and starts.

Jill Desjean:

Right. Borrowers are in and out of repayment all the time. We have the pandemic pause. Almost everybody was out of repayment for a while, but there are many statuses that are repayment statuses, even if you're not in repayment. During the payment pause, those borrowers were considered to be in repayment. But for instance, if you've defaulted on your loans, the period of time you've spent in default is not a repayment status. And the department had indicated that that was a group of borrowers that they might want to capture with this. So these were the things that the negotiators were kind of hammering away at, saying you've got to be really precise because you don't want to unintentionally leave somebody out of this because the word repayment actually means a very specific thing.

So another complication is for borrowers with higher balances than they borrowed. That's the natural state of affairs for the first couple of months or couple of years after graduation if you borrowed unsubsidized loans for the most part because you've had interest accruing during school and likely you haven't been paying it down. So what that department's trying to get at is at what point is it reasonable to expect that someone would've paid down that in-school interest? At what point is it really now this is a burden as opposed to just sort of like, yeah, you've got some accrued interest that happened, you're going to make payments and that will go away. Those are the types of details that group's trying to kind of hammer away at.

Allie Arcese:

Yeah. Or would they even look at if your balance is higher than when you left school? I don't know if that was something that was discussed at all.

Jill Desjean:

Yeah, I think everything's still kind of on the table.

Allie Arcese:

On the table.

Jill Desjean:

Even with proposed regulatory text, I think at this stage they're done now, but during week two of negotiations, during any neg reg, things are still very much fluid and the department is still very much willing to take stuff into consideration. So it'll be interesting to see what their next set of regulatory text looks like.

Allie Arcese:

And so those people would get a one-time cancellation. But it sounds like there's another group or several groups that would have a different situation. What are they looking at?

Jill Desjean:

Yeah, so there would be other borrowers who sort of, once they reached certain points they could potentially qualify for forgiveness. So not just kind of like a one-time event forgiven and then you're all gone,, because obviously the 25 years of repayment moving forward, we have better IDR plans than we had in the past. And so there really shouldn't be. They're easier to apply for and everything else. There shouldn't be as many people who find themselves in these situations where they've just been repaying their debt for 20, 25 years and it's still out there because they should have been caught up by some other process. So the idea is kind of make whole these people who have been hanging out for a long time with burdensome debt, clean that all up, and then moving forward have different criteria for forgiveness or cancellation, many of which are already there.

Public service loan forgiveness, IDR, stuff like that. So one of the groups that they're considering in terms of just forgiving debt as people reach certain milestones or something, anyone who could have been enrolled in an IDR plan, someone who could have qualified for public service loan forgiveness or a closed school discharge, trying to round up all those borrowers that really shouldn't be in repayment anymore because they should have qualified for some type of cancellation or forgiveness and just haven't because of they didn't know existed or they got bad advice and were told that they wouldn't qualify for it or some error or something like that. Another group that departments looking to cancel debt for includes those who attended programs that fail the GE metrics or have a high cohort default rate for those students whose debt went into the calculation of those rates.

So those rates are calculated a couple of years out after graduation. If you're a borrower and your debt was factored into the failing gainful employment metrics that would impact an institution's ability to be able to award title four aid. They're saying, "Well, you were the students who suffered to make the program no longer eligible. You should get your debt forgiven as well." And lastly, there's kind of a catchall category. So there's no proposed regulatory text for this yet, but more just a list of questions, some more brainstorming to identify borrowers who are just experiencing general financial hardship in some way, aside from just the fact that they have student loans and how to identify groups of students that would be people who might be struggling to repay their loans because of financial circumstances that exist outside of the amount of debt they have.

Allie Arcese:

Yeah, it sounds like there was a lot of discussion and brainstorming on that one in particular. Where does it seem like the group is headed on that?

Jill Desjean:

People had so many ideas. I couldn't even list them all here, but some things that seemed popular that came up were looking at something like a borrower's age. There's the time in repayment, but there's also just, even if you haven't been in repayment for a very long time because maybe you've been taking advantage of deferments or maybe you borrowed a parent plus loan for your child, so you were older when you borrowed, but people said, if you just are a certain age and maybe you're retired already, so your income is not as high as it used to be, if you just reach a certain age and you have student loan debt, maybe we just cancel it. Maybe that's just one of those criteria. Having a disability or chronic illness, people talked about just the financial toll of medical expenses and things like that, but also employment opportunities are not as abundant for people who have a disability or chronic illness.

They may not be able to work full time, and so their ability to pay off their student loans and do a lot of things are impacted by the fact that it is expensive to have a disability or chronic illness. Having received means tested benefits was another. One person brought up looking at the year that you graduated. Students who graduate during really lean economic times could be people who are exceptionally impacted by their student loan debt. Because sort of your salary your first year out of college sort of decides where your trajectory is. And so people who graduated during the great recession or people who graduated during the COVID-19 pandemic when employment opportunities were not very abundant, might have ended up underemployed or just taken longer to get on a path. And that may keep them forever at never achieving the true potential, earnings potential that they could have achieved from college if they'd graduated during better times.

Allie Arcese:

Yeah, that one was interesting.

Jill Desjean:

Yeah. What also came up was a really great point that somebody brought up. People were talking about using the federal poverty guidelines as some indicator of someone's just general financial distress. And this is a common thing that comes up a lot that the federal poverty guidelines really the way they were developed a really long time ago, really don't define any kind of a standard of living. So many times when you have a means tested benefit, it's using a multiple of the federal poverty guideline. Right?

In the past Simplification Act for Automatic Pell Grant Eligibility, they're using 175%, 225%, 300, 400, higher multiples of the federal poverty guideline to get at, yeah, sure. $13,000 a year is not enough for anybody to be able to get by in any way. You've got to get higher than that to set a minimum standard of living. But what this one negotiator brought up that I thought was a great point was just to reset the conversation and make sure that everyone is thinking about things the same way. They said, "Well, we're talking about loans borrowed for college. People go to college, not just so they can afford to feed themselves. You should expect a little more than just being able to survive."

Allie Arcese:

I imagine maybe they'll look at debt to income ratios. So what is next for the negotiated rulemaking committee? We've got one more session, right?

Jill Desjean:

That's right. Yep. So the next and last session is early December, and that's where they will see the full proposed regulatory texts. So maybe some amendments to what they saw this session, but then also text for this general financial hardship category and however the department chooses to define that, to propose to define that. And so they'll kind of hash things out on day one. I don't know exactly how they'll do things. This is a unique rulemaking session for recent years in that they just have one topic. Rulemaking the past couple of years has been a gajillion topic. So they've typically been going topic by topic and voting on consensus, but where they have only one topic, I don't know if they'll break it up into chunks to make sure people are okay as they move on so that maybe if people aren't okay at a place, they could say, "Okay, let's pause." And talk more there so that when they ultimately get to the point where they have to vote for consensus on the entire text, increase that likelihood that people will get there.

So if consensus is reached, that means the department is bound to the language that they've agreed to at the negotiating table. They'll release that language for public comment at some point in 2024, we'll all have a chance to weigh in there, and then they'll release final language, presumably before November one of next year so that the regs can become effective July 1st, 2025. If there's no consensus, then the department is free to craft language as they see fit. They still have to go through that public comment period. So they would just publish whatever language they want for public comment and then issue a final rule. When that happens, when consensus isn't reached, they tend to rely heavily on what was discussed in the negotiations. So it's not like they're going to ... They've shown their hand, they've shown what they're proposing. They're not going to just come up with something wildly different. But any place where negotiators were pushing back that they really wanted to stay, if they don't get to consensus, they'll probably stay with whatever they put out there.

Allie Arcese:

What do you think? I mean, what are the chances that they'll reach consensus? Because one, this is like past neg regs have been, and even back when it was several years ago, one topic discussed, the sessions were three, four, I think a couple were even five days long each time. And then they had three sessions. Sometimes they added more days or an entire additional session. These have only been two days. Two-

Jill Desjean:

It never seems like enough time.

Allie Arcese:

Yeah.

Jill Desjean:

It never ever seems like enough time-

Allie Arcese:

But this one's particularly tight.

Jill Desjean:

Yeah. No one's asked. Which is interesting because in past times I feel like almost every session I've watched for the past couple years, someone's like, this is not enough time. We have to add a week, or we have to extend our days and make our days longer, or whatever it might be. I've not heard any requests from anyone to say, "Let's do more with this." It feels very right now sort of like, ooh, it seems like there's so much more to do. And yet I feel like that's always the case that week two.

It's like, we've come so far, we've got this regulatory language and we're just about there, but there's so much else to hash out. And yet I'm always amazed during the third sessions that everything just kind of comes together. The mediators who run it, they know how to run a meeting, that's their job. There are a lot of rules for keeping people on track and everything. They stick to a pretty strict schedule. So yeah, it doesn't seem like enough time, but I just kind of feel like, well-

Allie Arcese:

[inaudible 00:18:27].

Jill Desjean:

It always needs to work out. So I guess it will this time too.

Allie Arcese:

Yeah, we'll see. All right, thanks Jill. Okay, so we're going to turn over to David Tolman for our fun ... Okay, that's probably really loud. Fun With FASFA. Are we still having fun with FASFA?

David Tolman:

Yeah, I think everyone in the financial aid world and even beyond is having fun with FASFA.

Allie Arcese:

So we should probably stick with this topic.

David Tolman:

Best not.

Allie Arcese:

Yeah, best not switch.

David Tolman:

Best not change. Yeah.

Allie Arcese:

So the last couple of times we've talked about contributors and a lot about parent contributors. One thing we haven't really discussed is how a student can invite a contributor to complete the FASFA. Can you tell us a little bit about that?

David Tolman:

Yeah, so just a reminder on contributors, that's anyone who's asked to provide information on the applicant's FASFA, which is always the student and then the student's spouse in some situations. Then the biological or adoptive parent or the spouse of the remarried parent who is on the FASFA, the stepparent. And we talked all about whether identifying the parents. We've done that in past podcasts, so I'm not going to rehash that here. But there's going to be information once they identify who is going to have to be a contributor, they're going to need certain information from that contributor in order to invite them. And the first thing is the legal name. And it's important that this name matches the name on the social security card because that's the name that the contributor would've used when they established their federal student aid ID.

Date of birth, social security number if they have one, mailing address if they don't, and we'll talk a little bit more later about what if they don't have an SSN, and an email address. So all those, when the parent or spouse, when they set up their FSA ID, they entered their legal name, their date of birth, an SSN, that information was used to verify that contributor's identity. So it's important that the information matches what the student enters so they've got the right person matched who can go into that student's application and add more information. So when the student is filling out their portion of the FASFA, and they'll be presented with a screen to enter that information about the contributor or the contributors, and they put that information in and then they also enter an email address for that contributor.

Allie Arcese:

Okay. And then the contributor entered an email address when setting up their FSA ID, will the student need to use that same email address?

David Tolman:

No. The email address is used in this case to notify the contributor that they need to log into the online form. The name, date of birth, security number all need to match. But the email address that that person used to create their FSA ID does not need to be the same.

Allie Arcese:

Okay. So what happens if a student makes a mistake and enters some incorrect information?

David Tolman:

Yeah, there's been a lot of talk about, well, how are students going to know their parents' social security number? So we could see that this might happen.

Allie Arcese:

And what if they can't get it?

David Tolman:

Well, yeah, we'll talk about that one in a second. But the student will actually, they'll have to go back. They'll save where they're at, they'll go back into the FAFSA and then they'll have to correct it before the parent or the student's spouse will be able to access that FASFA. And again, it's just to make sure that the person completing the FAFSA matches who the student intends to complete it.

Allie Arcese:

And so then now let's get into what if the student's parent does not have a social security number?

David Tolman:

So back in the steps of creating an FSA ID, it's still possible for a parent to create an FSA ID without one. So when the student is on the invitation screen, when they're completing their FASFA, and there is the space to enter the social security number, below that is a checkbox that says, "My parent doesn't have an SSN." So when that box is checked, the field's going to flip and it will, instead of requiring the social security number, it's going to request the parent's full mailing address. And then that mailing address has to match exactly what was in the parent's FSA ID, along with everything else that needs to match.

Allie Arcese:

And an FSA ID is required to be a contributor?

David Tolman:

Yeah. And we talked about FSA ID creation process during September's podcast. So that's a whole 'nother topic as they say. So I'd refer listeners to that in September or to other information. There's a lot of information about creating an FSA ID, to look into the details of that process for a refresher.

Allie Arcese:

And then so what happens once a parent or a spouse receives the invitation and enters the student's online FASFA?

David Tolman:

So they'll receive that email invite, they'll log in using the FSA ID and then complete their portion of the FASFA. There's some demographic questions. They'll also be asked to provide consent for the federal tax information or FTI to be transferred from the IRS and to be used for Title IV aid administration.

Allie Arcese:

And so what happens if the parent does not want to provide consent?

David Tolman:

Well, online the students' FAFSA will not be completed. It just will be rejected if they try and submit.

Allie Arcese:

Okay, that sounds like a topic for another time.

David Tolman:

It is. Yeah. There's so many different directions we could go on this train track.

Allie Arcese:

Well, if the parent does provide consent and then later on they change their mind, can they revoke that consent?

David Tolman:

Yeah, that's a good question. Can consent be revoked? Not for that award year. So once allowed and that FTI data comes in, it can't be revoked. Now the next year a new FAFSA is going to be required and the process is going to repeat then and the parent could decide next year not to provide consent. But for the current year, once it's provided, it's done.

Allie Arcese:

One and done. Okay. So if the parent doesn't want to transfer IRS data and they don't want to provide consent, what other options are there, or are there other options?

David Tolman:

There are. So if what the parent is objecting to is the IRS transfer of that federal tax information, there's an option to complete a paper FAFSA. And an FSA ID is not required for the paper FASFA, but the parent still must provide their financial information on the paper FAFSA. So by not providing consent, the parent really is just objecting to the format of providing their financial information. By not providing consent to the online version, they're saying, "I don't want this information to come from the IRS." But otherwise, by providing information on the paper FAFSA, they sign that the information's all true and accurate, meaning it matches what they provided to the IRS. So it's still coming from the IRS. So if what the parent's objecting to is providing financial information altogether, that's a very different situation. It's something that has been happening for years, in some cases. That leaves the student ineligible for any title IV aid other than the direct unsubsidized loans. And that's a situation that schools are familiar with now, if the parents go that direction.

Allie Arcese:

So is the parent's spouse or an independent student's spouse also required to provide consent and then does the student need to also invite them as a contributor?

David Tolman:

Okay, so this is a hot topic right now. So we're going to talk about the difference between theory and practice. So in theory, as long as the parents or the spouse and the student are joint tax filers, only the independent student or one parent of a dependent student, if there's more than one, provide consent. Now a student can invite both parents to provide consent if they did not file a joint return for the base year. And the same with an independent student and inviting a spouse if they didn't file a joint return. So in those cases, they would need to invite somebody else to get that FTI, which I keep thinking is [inaudible 00:28:33] total income, but federal tax information.

So now we have a look at practice. The prototype, enlightened FAFSA, is out there and financial aid administrators have noticed in situations, even when a joint tax return is filed, it asks one parent to invite the other parent to join as a contributor to answer some demographic questions. It also asks the independent student to invite their spouse, and this contradicts on the flow chart what the Department of Education published in September. They said that would not be required. Now I do want to stress this is a prototype and fine-tuning is still going to occur, but if it does stay that way, it's going to require both parents and an independent student spouse to obtain an FSA ID. Even to answer those two or three demographic type questions that are on that FASFA, they're not authorizing providing consent to the FTI. They're still logging in to answer like two or three questions. So we don't know if that's going to be how the final version works and NASFAA is already seeking clarification on this. So look for information in Today's News for any clarification we receive on this because it is still an unknown.

Allie Arcese:

Yes, as soon as we have some information, we'll be sure to share it with everyone. So David, we still didn't get a chance to talk about family size.

David Tolman:

I know I've been teasing it for the last two months and I'd hope we would by now, but there's still more fun with FAFSA ahead.

Allie Arcese:

I know we've got contents for weeks and weeks and weeks.

David Tolman:

Yeah, we could do this every week. I'm sure listeners would drop off dramatically if we did regulatory podcasts every week in place of everything else.

Allie Arcese:

I don't know. I don't know about that.

David Tolman:

Do we have a December episode?

Allie Arcese:

We've got a couple, yeah. Okay.

David Tolman:

So hopefully we can get the family size in December.

Allie Arcese:

Well, sure. We'll do our best. Thanks David. That I'm sure was super helpful to our listeners and we look forward to getting into more fun with FAFSA in the coming weeks. Thanks everyone for joining us for another episode of "Off the Cuff." Be sure to subscribe, tell a friend and send us your comments and questions and we will see you again soon.