

NASFAA's "Off the Cuff" Podcast – Episode 301 Transcript

OTC AskRegs Experts: Preparing for New Regulations Effective on July 1, 2024

Hugh Ferguson:

Hey, everyone, welcome to another edition of "Off the Cuff." I'm Hugh Ferguson, with our communications team.

Jill Desjean:

I'm Jill Desjean, with NASFAA's policy team.

David Tolman:

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

Hugh Ferguson:

Welcome back, everybody. I'm filling in for Ally this week. We've got a very in the weeds episode ahead for everyone to really get some details on some upcoming regulations that are going to be top-of-mind this summer. Let's jump into things.

Jill, you're going to dig a little further into some of the more confusing aspects of these new regulations that are becoming effective on July 1st, 2024. We have an article in the show notes that'll give an outline to this. But I was wondering if you could outline some of the more confusing aspects?

Jill Desjean:

Yeah, absolutely. As you know, in the weeds is where David and I both like to live. You never listen to an AskRegs episode of "OTC" without getting in the weeds. This one is weedy, I'll share it up front. But I felt like, after last week's webinar that TRA put on covering the new regulations that become effective July 1, I initially was going to cover a couple of topics that I felt like had a lot of questions. Then I just realized I had so much to say about transcript withholding that I'm just going to do that, so here we go.

Just to get things started, not making fun of people for not understanding, this transcript withholding thing is such an easy place to think yourself into circles. Just when you think you have it right, you're like, "Wait, but ..." I've done it nine million times and that's the only reason I feel like I understand. I hope I don't say anything wrong today, to contradict that statement. I'm hoping that the benefit of my having thought and over-thought this too many times, and trying to put it into a context that I can understand, maybe will help people wrap their heads around it.

Probably the most common questions I've heard, either on the webinar or separately through communities, or by email, or whatever it might be, have to do with this idea of a partial transcript. I've heard questions like, "How can my school be expected to issue a partial transcript? That would be way too burdensome for my school. Our systems can't even do that." The really short answer, you can just listen to this and then just log off if you don't want to hear the rest of this explanation, but the short answer is the Department doesn't want you to issue a partial transcript in cases where a student owes

you a balance. They want you to issue a full transcript. The rule isn't requiring partial transcripts, it's permitting them.

When you think, big picture, about what regulations do, there's two categories that you might put them into. You have the ones that require you to do something, and there are the ones that prohibit you from doing something. This one's actually about prohibiting a school from doing something. They are prohibiting a school from withholding an entire transcript for a balance due, when that balance due is only attributable to one or more terms. I think if you look at it that way. Instead of the Department wants me to issue partial transcripts, and this is wild, is the Department's prohibiting me from withholding an entire transcript. But it's providing a loophole, a way that I can still impose some kind of penalty on a student that owes a balance, but in a very limited capacity. It's just an option. If it's just too hard for my school, I just have to issue the full transcript. If it's an easier thing or a burden that my school is willing to take on to issue a partial transcript, so that I can still have students somewhat accountable for paying their unpaid balances, this is an option that I have.

I think another thing that's probably helpful is understanding the background on all of this, because I think it might help to understand how ED landed here and why the rule is written the way it is. Essentially, during negotiated rulemaking, which was for this, two years ago, three years ago, 21-22. So two years ago. The Department wanted to ban the practice of transcript withholding as a whole for students who owe the school a balance. Some states have done that at the state level, and the Department was pursuing that option at the federal level. But they felt they didn't have the authority to go that far, since their authority is really limited for something like this, to the Title IV aid aspect of it. They had to tie this desire to withhold transcripts to the Title IV administration.

What they determined was that they do have authority to ban transcript withholding for a term when a student received Title IV aid. They decided, "We can't stop you, schools, from withholding a transcript for non-Title IV recipients who owe you a balance, or for terms where a student didn't receive Title IV aid and they do owe you a balance." But they decided they can stop you from withholding a student's entire transcript, which is the common practice, if the student only has an unpaid balance for one or more terms and they received Title IV aid in those terms.

A student's balance is always attributable to some set of charges, so if you were say breaking down a Title IV recipient's student account statement term-by-term, you'd see as an example, maybe a student had paid in full for the fall. They've got charges, they've got credits against those charges, whether they be financial aid, payments, whatever they might be, but the net balance is zero. You might see the same thing for the spring. They had charges, they covered them all in some way. But then, say in the summer, you would see oh, wait a minute. The student had \$10,000 of charges, and only \$8000 of credits against those charges. A student has a \$2000 balance for the summer. In that case, the school has two choices. The school can issue a partial transcript for fall and spring, because the student paid in full for those terms so the student is entitled to the transcript for those terms. Or the school can just say, "That's too hard to issue a partial transcript, I'm just issuing them their full transcript."

Coming back to where we started, I think the Department is seeing this is a situation where they expect schools will just issue a full transcript because the flexibility they're allowing to provide partial transcripts is probably just too much work for many schools, or most schools, I'm not sure, to implement. The thing I've heard is that it would be really hard to do.

Hugh Ferguson:

Yeah. Thanks, Jill. That sounds very helpful. This Neg Reg feels so long ago at this point, so it's definitely very handy to have this update where there was so much nuance going on in those conversations, and

back-and-forth between negotiators and the Department. Is there anything else that schools need to know about transcript withholding and the regs that are effective this July?

Jill Desjean:

Yeah. You know, of course, there is. Not that all that was just, "Oh, simple. Now I get it." There is more to it. I do want to tack on a few extra details, just so people have a sense. It's so irritating. How long have I been talking? This is about a chunk this long in the regulations, in several hundred pages of regulations. This is just two small paragraphs, not a lot of text, but there is so much to unpack when you think about it. These are some of those extra details that are squeezed into that very concise text in the new regs.

One thing, either not tucked in, but questions that have come up that have either been addressed in guidance, or that we've been able to read between the lines. I've heard questions about retroactivity and how this applies to payment periods that have already passed. Say a student was asking for a transcript for last fall and spring, how do these regs apply? These regs apply to transcript requests made on or after July 1st. That's where that July 1st effective date comes into play, is for when the student is requesting their transcript. It's not retroactive in the sense that you have to look at an old transcript request that you already denied, and go ahead now and issue it. You don't have to do that. It applies to all terms a student attended before that.

If you get a request on July 15th for a transcript, and the student owes the school a balance, you either have to issue the full transcript, or you have to go back and figure out which terms they've received Title IV aid, and had paid in full, and issue at least a partial transcript for those terms.

In terms of this idea of a balance due, it applies to institutional charges. So what the student owes you for institutional charges, that has a definition in the regulations. The Department is using the same one as they use in the cash management regulations.

In terms of being paid in full, what counts as the student having paid for a particular semester? These rules consider a term to be paid in full either because there's just no balance. That case of \$10,000 of charges, and you have \$10,000 of credits from aid and payments, your net balance is zero for the term. Or if you've got a balance, but you the student have made an arrangement to repay that balance. The Department has said that that counts as having paid in full and the student is entitled to a transcript for that term. They've also clarified in their guidance that, if one of those arrangements were in place, the school could at least wait until the student had made one payment under that arrangement to repay before issuing the transcript for the unpaid term or terms.

They, of course, always have the option to issue the full transcript. None of this applies. You can always give somebody a full transcript. This is, again, it's about what you can't do, but not what you can do. You can always give a full transcript. If you don't feel like going back, and doing all this math, and figuring out which terms students paid for, issue the full transcript. But if you want to go back and look term-by-term, you could issue a partial transcript, but you'd have to issue a transcript for a term where there was an arrangement to pay. You could wait for the student to make one payment on that arrangement to pay before you issued the transcript for that term.

The Department has also clarified that, if a student made an arrangement to pay, and then stopped making payments ... Let's say they made two payments, but they still had a balance due, and then they asked you for a transcript, you could withhold the transcript. But again, only for those terms with an unpaid balance. The student's always entitled to a transcript for terms for which they've paid in full. We get back to this concept, it might just be easier to issue a full transcript. The Department is giving you flexibility here, but you don't have to take advantage of that.

Some other questions we've gotten have to do with withholding a transcript for other reasons other than just a balance due from that term. One example that came up was a default on a Perkins loan. If the school is collecting the Perkins loan, the student owes the school money. But the Department has been clear in their guidance that this rule is only about owing a Title IV balance, and does not address student loan defaults.

Somewhat related to that question is one about how this rule applies to withholding a student's diploma from an unpaid balance. So not a transcript, but a diploma. How does the rule extend beyond transcripts? Again, the Department, in guidance, has made clear that this does not apply to diplomas. The rule is about transcripts. Except for the fact that the new rule also prohibits not just transcript withholding, but also negative action for a balance due when the balance is due to an institution's error in their administration of Title IV aid, or if the institution committed fraud or misconduct. This negative action part only applies to balances that arise from institutional error, fraud or misconduct. But just note, it's broader than just prohibiting transcript withholding. It's about any negative action.

Going back to example of withholding a diploma for an unpaid balance, that's fine if the student just didn't pay. If they just, after their aid was applied for a term, they owed 1000 bucks and they didn't pay it. That's okay. But if the student's balance is because of institutional error, fraud, or misconduct, you likely can't withhold the diploma because that would be a negative action.

I know that's a lot. Hopefully I said it slowly. Hopefully my examples make sense and I didn't trip over myself. But it really is a lot. It is so simple in the regs. I remember thinking about it at Neg Reg and being, "Okay, this tracks." But then as soon as you step away for a minute, you start questioning, "Wait, does it make sense?" I think the big thing is really the Department expects you to issue a full transcript. They couldn't make you do that, so that's why the rule isn't written that way. But I think the strong expectation is just issue the transcript. Issue the transcript. It's easy. You don't have to trip over yourself, you don't have to think in circles. If you want to though, if you want to issue a partial transcript for those terms that the student did not pay, you can. It's probably going to involve work from other offices, it's probably going to involve some kind of system's changes to be able to easily identify which terms you can transcript and which terms you can't.

An organization that's been doing a really good job covering this too is AACRO, the organization that represents college registrars. I know they did a webinar yesterday that I actually missed, so hopefully I haven't contradicted anything they said there. But obviously, this is an issue that's of real interest to them, so definitely check that out. Or have your registrars have that out if they haven't, just to try to get some further clarity on this.

Hugh Ferguson:

Yeah, for sure. It's amazing how much analysis can go into a single graph of reg text.

Jill Desjean:

Yeah.

Hugh Ferguson:

And just the back-and-forth of all the different drafts and stuff. There's a lot to know about this. That was incredibly helpful. Thank you, Jill.

Jill, you did a deep dive into one of the new regulations that go into effect on July 1st. David, you're going to cover everything else in that bucket, right?

David Tolman:

Well, yes and no. It's going to be unlike a deep dive. We're just going to do a speed round of some of the more wide-reaching regulations that are effective on July 1st. Because it's clear, the team that answers the AskRegs questions that come in, there are some schools that just have no idea that what they're asking about is going to change on July 1st. I'm going to review the topics, and then if that topic is unfamiliar to you, I would encourage anyone whose listening and is unfamiliar, to seek out the resources to get up-to-speed on that topic. We can talk about some of those resources at the end.

But I do want to mention that, last week, NASFAA did a webinar. Sarah Austin, Tiffany Gibbs, and also Jill Desjean, they all did an excellent job. It was called In Case You Missed It: New Regulations Effective July 1st, 2024. All of the things that I'm going to talk about right now were covered in more detail in that webinar.

Hugh Ferguson:

That's great. Before we get into more details, how can schools access that webinar?

David Tolman:

Well, it is already available as an on demand webinar recording. We'll post a link in the show notes on how to directly get to that webinar.

Hugh Ferguson:

Yeah, that's great. All right. Well, let's get started on the speed round.

David Tolman:

Okay. Well, let's start with administrative capability, because there were a lot of changes just in that one section of the regs. For those who know the regulations, it's 668.16.

Here we go, speed round. Financial aid counseling and communication. It primarily impacts information on aid offers, but it's worth reviewing in full. Schools already comply if their aid offers align with NASFAA's Code of Conduct or the College Cost Transparency Initiative.

The next one. High school diploma validity. Schools must have a policy and procedure in place when it questions whether a high school diploma is valid. Schools don't need to go searching for every high school diploma, but the procedures need to address what the school will do if it questions the legitimacy of either the diploma itself, or the entity that provided it.

All right, next one in administrative capability is career services. That generally includes items such as the number and distribution of career services staff, as well as promises that schools make to students regarding career services, and placement, and those types of things.

Then, kind of related. A clinical, or externship/internship is required, either for the completion of the academic program in which the student's enrolled, or for an occupational license. The availability of that internship must occur within 45 days of completing the program. It must be geographically accessible. That term, geographically accessible, for these clinicals and internships, I could probably spend as much time on that alone as Jill did on withholding transcripts. If that's one that does apply to you, seek out that resources. Again, that will give you more information.

Next one, timely disbursement. Title IV funds need to be dispersed to students in a timely manner that best meets the needs of students. Three more in this area. Substantial misrepresentation or aggressive and deceptive recruitment practices are prohibited. Debarment or suspension of school officials will

place their administrative capability at risk. Title IV revenue from failing gainful employment programs, or GE programs, must be less than half of the institution's total revenue.

That's a speed round of some of the new administrative capability regulations.

Hugh Ferguson:

Yeah. Wow, that's a lot of changes, just under administrative capability. I remember, Marie and I were covering this in Neg Reg and it just felt like we had so time designated to this topic alone. For members that weren't able to tune into these hour-long conversations, where can they go to learn more?

David Tolman:

Well, probably the first place I would go is NASFAA's Compiled Regulations, which are available to everybody. Go to Section 668.16. In those compiled regulations, the font is blue for things that are new effective July 1st. Then, you'll see some things that are crossed out if they're no longer effective. You're going to see a lot of blue, because there's a lot of new things. There's a list that goes from A to V, with various levels of complexity. Some are just a sentence long. A, I think, is one that is a little bit longer. Some are quite long. That's the first place I'd go, 668.16 in NASFAA's Compiled Regulations.

If you access the webinar that I talked about, that we're linking to. In the handout, there is an extensive list of resources to go to.

Then also, wow, the NASFAA Conference is starting a week from Sunday. But, the NASFAA U team that I'm part of, my and my colleagues are doing a session at the conference on Sunday morning. It's a pre-conference session, an authorized event. It goes into detail just on administrative capability. It is three-and-a-half hours, but those who complete it will qualify for complimentary access to the administrative capability credential, and will receive a link to download the administrative capability self-study guide.

Hugh Ferguson:

That all sounds great. What else do you have for us, David?

David Tolman:

All right. The next one, let's look at institutional eligibility to participate in the Title IV programs. One is they've expanded the performance measures that the Department can consider when determining whether to approve a school's participation. Three new ratios were added.

The first is the fraction of the students who withdrew from the school within 100 or 150 percent of the published length of the program in which students were enrolled prior to their withdrawal. It doesn't say how they're going to use that measurement and what's the threshold, on any of these.

The next ratio is one that compares the amount of money the school spends on instruction and support, compared to the funds spent on recruiting, advertising, and other activities that typically happen prior to when the student enrolls.

Then the last one is the passage rate on licensure examinations. If the program the student's enrolled in is designed to prepare students for employment in an occupation that requires licensure, or something similar to it, and the institution is required by either an accrediting agency or a state to report the passage rates on those examinations. The reference on that. All of this is in 668.13E, if anyone wants to go looking for that.

Then also, the criteria for provisional certification has been expanded. Provisional certification might apply if Ed determines the school is at risk of closing, or the school has demonstrated difficulty in

meeting financial responsibility requirements. Lots of details you can pursue, if you want to look more into those topics.

Hugh Ferguson:

Do these criteria apply only to schools seeking initial approval to participate?

David Tolman:

Yeah, those criteria do apply to those seeking initial participation, but it will also start applying to schools who are already approved as their time for renewal comes up.

The next one is who needs to sign the program participation agreement? Another one that we could talk about in detail, but here's the high level. Authorized representative of the institution and an authorized representative of an entity, and this is what's new, if that entity has direct or indirect ownership of the institution, or has power to exercise control over the institution, but this second signature applies only to proprietary and private nonprofit institutions.

Hugh Ferguson:

Does this mean that a president can designate an authorized representative?

David Tolman:

That's a good question and we don't have the app instructions. But FSA training video refers to obtaining the signature of the president, CEO, or chancellor. I don't know if they still want the CEO or the president to be the authorized representative, and it just hasn't been updated, or if it remains the requirement. If a school's in the process of applying or renewing its agreement, they should contact their school participation division for who that authorized individual will be, if they're seeking a signature from someone other than the president.

Hugh Ferguson:

Got it. Could this mean that a signature would be required from the Board of Trustees?

David Tolman:

Yeah. If it is a private nonprofit institution or a proprietary institution, and the board has power to exercise control over the institution, which in most cases, is true, yeah a signature would be required.

Hugh Ferguson:

Got it. Then just with the timeline, are schools required to provide these signatures prior to July 1, 2024?

David Tolman:

Well, the signature policy actually applies to program participation agreements issued on or after July 1st, 2022 if it resulted from a recertification application, those schools that are in process of needing to provide signatures by the Department. If it hasn't been completed but you're still trying to get those signatures, then you're going to need to follow the new rules. Otherwise, as schools seek initial approval or when it's time to apply for participation renewal, or to report a change in the ownership, which would require those updates, those new signatures requirements will kick in. Just want to caution students, allow some lead time to track down these individuals, and be prepared to answer questions. It might not

be something that you can just say, "Hey, will just sign this," because you might need to track down who can sign it.

All right, some other changes. Gainful employment, we're not going to talk a lot about gainful employment. There is a new limit on the number of CLAC hours or credit hours that can be offered in a gainful employment program to 100% of the minimum number of hours established by the state for training in a recognized occupation.

Hugh Ferguson:

Got it. What was the previous limit?

David Tolman:

Yeah. The previous limit was 150% of the minimum number of hours.

Hugh Ferguson:

Does that mean that schools might need to reduce the number of hours in their GE programs?

David Tolman:

Yes, it may. If this applies to your program at your school, see Dear Colleague Letter GEN2406. Then remember, if you do change the length of your program to comply because it's required to, that you need to report that on your E app, the change in the number of hours.

All right. The next one, distance education correspondence courses. Another one that can go into more detail. But you need to satisfy a state's requirements for accreditation, consumer information, and licensure in the state where either the distance learning student is located when they enroll, or the state where the student plans to seek employment after they finish the program. State is defined by the student's state of residence at the time of enrollment, or the state that that distance learning student indicates they want to seek employment as of the time of enrollment.

Hugh Ferguson:

How does the school determine the state?

David Tolman:

Currently, Ed doesn't dictate that process other than the school must have a policy for consistently gathering that information and maintain documentation for each student on that state determination.

Hugh Ferguson:

Got it. Is there more depth to the weeds that we have to get into?

David Tolman:

There are. Transcript withholding, and a great reference for that is the first half of this podcast with Jill, talking about that. Ability to benefit, but the new regulations boil down to this. If the student first enrolled in an eligible program prior to July 1st, 2012, the ability to benefit provisions apply, if the student doesn't otherwise have a high school diploma equivalent or completely homeschooling. Now, that was 12 years ago, so the student may actually have the equivalent by now by completing the

number of hours. But if the student was not enrolled prior to July 1st, 2012, then ability to benefit applies only if the student is enrolled in an eligible career pathway program.

Hugh Ferguson:

Got it. Then, we haven't really mentioned gainful employment yet, other than the new restrictions on the length of GE programs. Are you going to dig in deeper on GE for us today?

David Tolman:

Not really. That one is so complex, even for a single topic podcast. But here's the highlight. There's gainful employment, there's financial value transparency. Schools are mixing up those two. There's lots of resources, detail on complexity. But look, at a high level, gainful employment refers to eligibility of programs to participate in the Title IV aid program. It applies to any program that meets the gainful employment definition, which is most non-degree programs offered at all types of institutions, and most of the programs offered at for-profit institutions. Loss of eligibility applies only to gainful employment.

The other one, they're very related because reporting requirements are in line, but financial value transparency. This is essentially for consumer information piece. This applies to nearly all programs at all types of institution.

If you've been lumping GE, gainful employment, and FVT together, and thinking all of these reporting requirements don't apply to you, then this would be a good time to start researching the requirements, because at least the financial value transparency will apply, even if it's not a gainful employment program. Remember, October 1st is the first deadline coming up, although NASFAA is pushing for an extension. But, October 1st is the deadline on that reporting.

Hugh Ferguson:

Got it. Then, can schools get more information from that in the same webinar?

David Tolman:

Yeah. It was covered in the webinar. But also, in May, NASFAA did a webinar, May 8th. Norma Robinson, Sarah Austin, Tiffany Gibbs on the basics of gainful employment and financial value transparency. I'll recommend that webinar, if you need to start learning about those pieces.

Hugh Ferguson:

That all sounds great. It seems like your team's been very busy with putting together a variety of webinars.

David Tolman:

Yeah, they have. They are very good at it. Just this week, David Futrell and Lisa Powell did a webinar on FAFSA simplification. I'm just fortunate to work with a very talented team, where I can refer to NASFAA webinars for details on all of this.

Hugh Ferguson:

Yeah. The entire NASFAA staff is very into the weeds. I think we might need a new catchphrase to really get to what level of weediness we're going into, because it seems to get deeper and deeper each week.

David Tolman:

Yeah. My daughter is coming, and my wife, are coming with me to the Milwaukee conference. There's a lot of music. There's a big music festival that's going to start the weekend after we're there. But there's usually a lot of music that's going on in Milwaukee all the time. But they're like, "The weekend of our conference, there's nothing going on." I'm like, "Well, that's because we're filling up the hotels. Everybody in financial aid actually goes to their sessions." They're like, "What?" There's not going to be people there to go have fun, when they're actually supposed to be in sessions because they will be in the sessions.

Hugh Ferguson:

For sure. Yeah, we want to make sure members don't want to miss out on anything going around town, because there's so much activity to take advantage of. Yeah.

Thank you, everyone, for tuning in this week on "Off the Cuff." We'll be back next week, with another episode. Be sure to subscribe, send us your comments, and we'll see you again next week.