

NASFAA's "Off the Cuff" Podcast – Episode 314 Transcript

OTC AskRegs Experts: Recapping the FSA Virtual Training Conference and Potential Paths of Biden-Era Regulations Under a Trump Administration

Maria Carrasco:

Hey everyone. Welcome to another episode of "Off the Cuff". I'm Maria Carrasco with our Comms Team.

Jill Desjean:

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

Sarah Austin:

And I'm Sarah Austin, also with NASFAA's Policy Team.

Maria Carrasco:

Hey, Sarah and Jill, welcome back. It's been a pretty busy week with the FSA conference and everything.

Jill Desjean:

Indeed. Yeah, lots going on.

Maria Carrasco:

I know we wanted to start the episode kind of recapping with what went on, you know, important information that people may have missed if they weren't able to attend or missed certain sessions. Sarah, can you kick us off?

Sarah Austin:

Yeah, so the FSA Training Conference was last week and we... I don't think there was any major news. When Jill and I were talking about what to discuss on this podcast we're like, "Okay, what was there that was major news" and there's really not much. But I do think, of course, there was helpful sessions. There was a few sessions that I think reiterated a lot of things that our members were looking for. Maybe cleared up some confusion.

Overall, I'd say I was looking back at kind of what our members were talking about in our Slack community, and there were some helpful tidbits of information that they learned, but also it was really overshadowed by their thoughts of the lack of live Q&A. So it was like for every comment about, "Oh, this is a really helpful piece of information," it was like, "But why isn't there live Q&A?" So I think that really kind of overshadowed their positive comments, which totally understandable.

I think, for example, the session on gainful employment, financial value, transparency, while I think it was super helpful, and I even took some notes of things that I'm like, "Yes, I'm so glad they're finally saying this verbally. They're making this very clear." There was quite a bit of chatter of people wanting that live Q&A for that session in particular, which understandable. We're one month out from the deadline for reporting, and I'm sure people have questions that they really wanted to be able to ask right then and there. So there was a lot of talk about that.

There was also... I kind of noted just a few things that, like I said, nothing major new information, but maybe things that people might've missed or just things that were helpful for them to remind our members of. So looking at the FAFSA updates, they did talk about corrections. And while on the slide it really didn't distinguish between batch corrections and school individual manual corrections, it is clear that batch corrections are coming first quarter of 2025 for both '24, '25, and '25, '26. So wanted to make that clear.

One of the things I really found interesting, which I don't know, Jill, if you watched this session, but they showed the new unsub-only question, which for '24, '25, I think they changed it several times. I know we've talked about this before, to try and make the messaging more clear so that students were only answering it when they truly wanted unsub only, but they showed the new version, and I think it's pretty good. I was impressed. The messaging seemed better to me. It had a pop-up message when they answered that they did want it, that seemed more clear.

They even made it... I think in multiple places. They said something along the lines of, "If you select this, you will not get any other aid." Making it much more clear that this is not probably the selection most students want to make. So I felt like that was good. I mean, I'll be interested to see, I guess, the data on as these FAFSAs are rolling in if we truly are getting better responses on that.

Jill Desjean:

Sarah, on that, I was at a conference earlier this week presenting, and I mentioned that the department had been working on this text. Last year, they updated it several times and then tried to get it right this time, and I said, "Seems like they did an okay job," and I didn't hear anyone... I didn't see anyone in the audience being like, "No, they didn't," or no one spoke up and said, "Actually, we think it's terrible." So I think that there is some agreement that maybe they've nailed it with this question after however many iterations.

Sarah Austin:

Right. The only other thing I think on the FAFSA updates that I noted was just a reminder that the FA-DDX would not... would continue to not work for those without a social security number, which now, I'm kind of trying to think if that came up in that session or the federal update, but either way, that was reiterated that that function will not be available for those who do not have a social security number this year.

Jill Desjean:

For all of '25, '26, right?

Sarah Austin:

Yes, exactly.

Jill Desjean:

Yeah.

Sarah Austin:

Some other sessions that I noted the GE/FVT session. Like I had said, I know people wanted live Q&A. I don't think there was really any new information in this session, but I personally found it helpful that it kind of clarified a lot of those things that the department also put in that recently released supplemental

training resource that they put out a few weeks back that really made it clear the difference between the Completers List and your GE/FVT reporting, how they're distinct from each other.

I know I talked about this on the podcast a few weeks ago, so I won't go back into that, but this session seemed to do a good job kind of clarifying that. And I think that was the first time that I can remember that they've said that verbally, some of those pieces, even though it was not supplemental training. Again, the data sharing, I think, was a big session that people were excited to watch.

While it was a great session, and I think does a really good job of providing some examples, it was very clear that the most recent guidance is only for FAFSA data, not FTI. And so I think some people were disappointed in that. No new information on the FTI guidance, and I think the language was that that is still coming sometime soon, but no set timeline, so no new information there. But again, helpful examples for the FAFSA data side of things.

Jill Desjean:

Yeah. I was a little disappointed at the Q&A. It wasn't live, but they did have questions. And I had sent over a ton of questions a few weeks ago, and I thought, "I'll wait until the conference because I'll bet they might get answered," and none of my questions got answer.

Maria Carrasco:

I guess this is a good time to plug our leadership conference in February and our national conference in June. Those are in-person. People want to go to an in-person conference where you can talk to department officials at our conferences and get your questions answered.

Sarah Austin:

But it's a good point. I know a lot of people keep begging for the FSA Training Conference to come back to in-person. While I don't necessarily see that happening, I mean, I don't work there, I don't know, but I don't see it personally happening, I do think it's important to point out I am so thankful that the department seems to always come to our conference still and does live Q&A.

[inaudible 00:07:07] we always, always hear from our members that they appreciate that, and they love being able to actually talk to people from the department at our conference. So good point. Other notes about the training conference? Let's see. Some of the things that I think these, again, were just reminders, but more really just to the verification conflicting information sessions.

When a user manually enters their family size for '24, '25, even if it matches the FTI that pulled over because they can't see what the FTI family size is, but if they manually enter their family size and it matches, the school is still required... that's still a required verified field, where for '25, '26, they have made it clear that that is not the case, and if it matches the FTI family size, the school does not need to verify that field, which I think was a welcomed piece of information.

I don't think this was new. I think they've already said this previously, but they reminded everyone, and I saw some chatter like, "Oh, thank goodness. Why isn't this the case for '24, '25?" Which, of course, it's not, but at least it's for '25, '26. The other piece that I saw a lot of people talking about were, and maybe this was not new. This could definitely be something that I missed. So tell me if I did.

But there are actually two different URLs for the FAFSA Partner Portal, depending on what year, which I don't know if I'm the only person that didn't know that, but because I saw some members talking about it, I could see myself just like FAA access, going to the general URL and being so confused when I can't find the year I'm looking for. So there are two distinct URLs. You cannot get to both years from one of

those is my understanding. So I saw them highlight that and thought that was interesting. Let's see. Anything else? There was some not... What's the word I'm looking for?

It wasn't verbal, but in the verification session, they were doing Q&A like in the background written out Q&A and I saw some questions come up from some of those answers, so I'm hoping we'll get some clarification because I think there was a few that at least our team over at NASFAA was thinking either there was updated information that kind of contradicted some of those answers, or maybe what the question was is not what we were thinking the question was, but there was some confusion on a few of those Q&A answers, I think, in that verification session.

So I'll be interested to see if we get any clarification or do any sort of follow-up. I know our AskRegs team was all over that, trying to figure out if they could clarify some of those answers for us. Other than that, I don't think there was anything that I noted. Anything else, Jill, that I'm missing?

Jill Desjean:

No, and you noticed a lot more than I did. I think you went to a lot more sessions than I did. It's always reassuring, though, when you're like, "I didn't know about that." I'm like, "Oh, thank goodness," because I always just assume I missed something. So safety in numbers or whatever that might be.

Maria Carrasco:

Awesome. Thanks, Sarah, for giving us a little recap. We also had some articles that I wrote, plugging myself, I guess, kind of recapping the keynote sessions, general sessions. We'll have those linked in the show notes if people want to read them. And I think the recordings from the conference are still available if people want to re-watch them I think.

Sarah Austin:

Yeah.

Jill Desjean:

Yeah. They keep the recordings up for a while, like a few months, for sure, because I've gone back and watched last year's recently within the past couple months. And I think they do transcripts as well, don't they?

Sarah Austin:

Yeah. So I think, right now, they're still on the actual training conference site, just in the on-demand section. And then, at some point, they get migrated over to a different webpage that's not the actual conference site anymore, but I know, like you're saying, they still have last year's on that other website. So I think they stay there for quite a while. And I do believe, at some point, there are transcripts. I don't know if they're up already.

Maria Carrasco:

Jill, you wanted to talk to us about some Biden-era regulations and how that may play out as we have a new presidential administration coming in January.

Jill Desjean:

Yeah, yeah. This is kind of... I guess this is for the people who don't like to read or don't have time to read because we did write an article covering a lot of this about. We put it out maybe this week,

might've been last week, but this will be... if you already read it, maybe you won't pick up too much from here, so you can just turn off the podcast right now. But as we've heard, just in the news generally, not in the financial aid or higher ed news, but the big news, the Trump administration is interested in deregulation. That's a big priority.

And so the question that we've been hearing from our members is sort of like what can they do in terms of deregulation? And essentially, regulations are different from laws, right. We all know that. But it's worth saying out loud. It's a lot harder to pass a law. You need a literal act of Congress, and conversely, hard to get a law off the books because you need Congress to do something. Regulations are a little easier, but it's not necessarily easy to rescind regulations. It's not always one of those stroke-of-a-pen type things where the president can just say, "Deregulate," but sometimes it's easier to do than others.

And so what I want to kind of do is just talk through the different stages that rules can be in and what that means in terms of how you can get rid of them if that's what's on your policy agenda. And so, of course, with regulations, the Department of Ed is required to engage stakeholders. So they use this process called Negotiated Rulemaking, where they bring together interested parties to talk over a span of three weeks about any kind of proposed rules the department wants to develop, and they come up with language together. They have a vote, and if they all agree to it, that becomes the proposed language.

If they don't agree, then the department can kind of do as they see fit, but they've still collected that feedback and likely incorporate it. And then, after Neg Reg ends, the department has to follow a next stage of notice and comment basically, where they put out their proposed language for the public to read, submit their comments on it. The department has to read every comment, and then they publish a final rule. And then the rule becomes effective usually the next July, depending on when the rule is published. And that's all just kind of background to help you understand those stages that I was going to talk about.

So there's sort of like the ideating phase where the department's thinking about drafting some rules, and even during Negotiated Rulemaking and between the conclusion of Neg Reg and the issuance of a proposed rule, that's all. There's nothing out there, right. There's ideas floating around, but nothing's really in any way official yet. It's all still very much an idea. And then rules move to this proposed stage where the department has published something in the Federal Register saying, "This is what we're thinking of doing. Hey everybody, let us know what you think."

Depending on the topic, literally everyone will let them know what they think. Or sometimes four people, including NASFAA, will tell them what they think. There are certain topics that are a lot more spicy than others, and then rules can be final, right. So after that proposed rule stage, review all the comments, make any changes, you need to, finalize the rules, publish them in the Federal Register as final, and then, like I mentioned, they become effective at a later date, typically the next July. But there's a lot of nuance and technicalities in there.

But for today's purposes, let's just say they have about seven months before they become final after... before they become effective after they have been finalized. And so what's really relevant for this conversation in terms of what could a new administration do to regulations that were negotiated, proposed, finalized during a previous administration, what they can do depends on what stage the rules were in when the administration's changed. And so if the rule is in this sort of ideating phase, if it's gone through Neg Reg but hasn't been proposed, basically a new administration can kind of just leave them there, right.

There's no obligation for new administration to pick up where the old administration left off. So those are easy. If the Biden administration had plans to regulate but wasn't able to get them finalized, they can be dead under a new administration at their discretion. And the same is true of a proposed rule that

hasn't been finalized. So actually, as I prepared for this, I had mentioned some examples of debt relief, Distance Education, TRIO, and R2T4, but I did see that just on Monday, the department has sent final rules for TRIO, R2T4, and Distance Ed to OMB for review.

So it seems as though they are intending to publish a final rule on those really under the wire sometime between now and January 20th. So we'll see what comes on there. So really the only thing that's in a proposed rule stage right now is student loan debt relief. But things that are in a proposed stage are very much like that ideating phase. Basically, a new administration can just say, "No, thank you. We don't care to follow up on this." They don't have to take any official action. No action kills those rules. So where things get complicated is with final rules because there's been a process to get those into place.

There is a process to dismantle them. A big example here that's probably on most people's minds is gainful employment and financial value transparency. Those were finalized a while ago. They're being implemented now and through 2026, but they were finalized under the Biden administration. And so, basically, for the department to make those rules invalid, to rescind them or invalidate them, they would have to follow Neg Reg again. So it's you do a Neg Reg to get the rules in place, you do a Neg Reg to rescind them. And this is what the Trump administration did in 2019 when they dismantled the Gainful Employment Framework during his first administration.

They might choose to do that exact thing again. The wild card this time around is the addition of the financial value transparency regs because those are new. And so, we know how Trump feels about gainful employment, but we don't know how he feels about financial value transparency. One of the big oppositions to gainful employment was it was accountability for not for all. Financial value transparency is accountability for all. So there is a chance that the Trump administration actually likes that and could keep that in place. So we will see more about that. But to get rid of any or all of those rules, they would have to go through Neg Reg.

There is another option, though. It's not something that's available to the department, but it's available to Congress. So not executive branch, but legislative branch. And that is called the Congressional Review Act, which Congress can use to invalidate rules that were recently finalized. So they couldn't use this for gainful employment and financial value transparency because too much time has passed. But there's this thing called the Congressional Review Act or the CRA that would allow Congress to invalidate any rules that had been finalized within the past 60 congressional days before the new Congress took place. So, for example, these new rules, the Distance Ed, R2T4, and I forget what the third topic was already, but-

Sarah Austin:

TRIO.

Jill Desjean:

... whichever [inaudible 00:18:38]... What was that?

Sarah Austin:

TRIO.

Jill Desjean:

TRIO programs. Thank you. If the department does manage, it seems like they're going to finalize those sometime between now and January 20th, those could be subject to the Congressional Review Act. So Congress could vote to say those rules are not valid, and that's a way to get rid of them. And I guess we

have one more category, rules being challenged. In the courts, you don't always have those, but in this administration, we do have some.

Student loan debt relief. It's in a proposed rule status, but it's also been blocked by the courts from the department issuing a final rule. And so because it's only at that proposed rule stage, assuming nothing happens before January 20th, the Trump administration is likely going to abandon it. They're not going to keep defending that in court because they are not on board with student loan debt relief at all. So that's likely just kind of how that will go.

The court's preventing them from finalizing rules. They're just going to say, "Don't worry, we're not doing that at all." So there's nothing to really be done. The SAVE plan gets a little bit trickier because that rule has been finalized, but its legality is being challenged again in the courts. We know the Trump administration isn't going to defend the SAVE plan in the courts because, again, he's spoken publicly about these plans. It does not like them.

But there, I'm not entirely sure what the next step would be because it's not as though not defending something in court means that the court just rules in favor of the plaintiff. So there probably still needs to be something that happens in the courts. But certainly, we're not going to see as long, drawn-out legal battle with the Trump administration defending the SAVE plan. So that one is still a little up in the air. And then, finally, we have this issue of the Supreme Court's overturn of the Chevron Doctrine, which I think that was that earlier this year of last year. I can't remember.

Maria Carrasco:

I think it was the summer.

Jill Desjean:

This summer. Okay. Yeah. So fairly recent. And the Chevron Doctrine is this thing. I'm not a lawyer. You're going to very quickly realize that. But it was this assumption that the courts have typically on that they would defer to agency's expertise in interpreting law in drafting their own regulations.

So the courts would say, "Listen, Department of Education, I don't know anything about R2T4, but I'm going to go ahead and assume that you do and that you regulated whatever's in statute about R2T4 using your expertise, and that we will defer to you knowing more about this than we do kind of thing." But this overturn of the Chevron Doctrine kind of calls all that into question, right.

Now, without that deference to the agency's regulations, that might've seemed safe in terms of being finalized and outside the window for Congressional Review Act could potentially now be subject to a review. So we've kind of gone through how the executive branch could get rid of regs, how the legislative branch could get rid of the regs, and now we've got an opportunity for the judicial branch to also get rid of regs.

So lots of ways. They're all a process. I think that's probably the most important thing. That was kind of where I started. There's no stroke of the pen for final rules. You can't just dismantle something that's already been in place, even if it isn't implemented. You can do it, but it's going to take time. It's going to take patience. There are steps that need to be gone through.

So yeah, so that's pretty much that. I think it's reasonable to expect deregulation. That's what's been promised, but with most of what we've seen go through with a Biden administration, other than anything that's been finalized, it'll take some time.

Maria Carrasco:

Oh my gosh, that was just like, there's so many ways [inaudible 00:22:23]-

Jill Desjean:

20 minutes of Jill droning. Wanted to get that all in. But yeah. No, it's an awful lot. It's very complicated. And I'm sure there's stuff that I don't understand, but that's kind of an early way to sort of start to understand what could happen and what couldn't happen.

Sarah Austin:

So I feel like it's... we have every possibility. Any possible scenario of any stage of the process, we have at least one thing in that bucket right now.

Jill Desjean:

Right. Yeah.

Sarah Austin:

[inaudible 00:22:52]-

Jill Desjean:

No, it's like I don't know. Don't know what [inaudible 00:22:54]. It's almost like a choose-your-own-adventure book or something. It's sort of like, if you choose this path, then this'll happen unless this happens, and then the endings different. And yeah, just this very wonderful-

Sarah Austin:

[inaudible 00:23:05] now have every path going right now.

Jill Desjean:

Yeah. Yeah. A grab bag of possibilities for deregulation.

Maria Carrasco:

Well, we'll have your article linked in the show notes, Jill. Are there any other resources folks can check out to keep track of everything once the new presidential administration does take office?

Jill Desjean:

Yeah. In Today's News. Obviously, we're all... we're watching this all really carefully. We have a timeline that we'll keep updating that we've got one for the '21, '22, and the '23, '24 Neg Reg agendas, and we put sort of what's in what stage at one time. So we'll keep that updated, and obviously, if things get rescinded, we'll update that.

And specific to just student loan debt relief, we've got our own timeline for that, so members can go and check that out. And that's another thing that we're updating as we learn more about the SAVE plan court challenges as well as the targeted debt relief Neg Reg stuff. So yeah, lots to follow, but NASFAA has got a lot of good resources out there. And, of course, listen to OTC for updates.

Maria Carrasco:

Thanks, Jill. Thanks, Sarah. And thanks, everyone, for tuning in to another episode of "Off the Cuff". Make sure you subscribe to your podcast channel choice, send us your comments, and we'll be back with more topics very soon.

