

## NASFAA's "Off the Cuff" Podcast – Episode 266 Transcript

### OTC AskRegs Experts: Deep Dive on Proposed GE Regs and Removal of Housing Question on FAFSA

Allie Arcese:

Hi everyone. Welcome to another episode of "Off the Cuff". I'm Allie Arcese, our director of communications, filling in for Justin this week.

Jill Desjean:

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

David Tolman:

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

Allie Arcese:

Welcome everybody. We are getting into crunch time with our annual conference only about 20 days away, I believe, and this is gearing up to be one of the biggest conferences we've ever had.

Jill Desjean:

Really?

Allie Arcese:

Yeah, there's over 2,500 people registered-

Jill Desjean:

Oh, wow.

Allie Arcese:

... which is pretty insane. Yeah, I think it's going to be fun.

Jill Desjean:

Very exciting.

Allie Arcese:

Yeah. Other things happening this week; crazy weather on the East Coast. Not really weather really, but these wildfires in Canada are just blowing smoke down the East Coast. I know it's bad in the DC area. I walked outside this morning and I was like, this smells unsettlingly familiar to California wildfires. Hugh, how is it where you are?

Hugh Ferguson:

Yeah, yesterday was pretty rough. Just felt like all smokiness on my hands when I just took my dog for a walk, but then this morning, it felt noticeably better. I don't know-

Allie Arcese:

Yeah, it's all blown down here.

Hugh Ferguson:

Yeah, or it's just swirling randomly. I don't know if the ocean is helping us, but then I don't know what's happening to the ocean.

Allie Arcese:

Yeah, it's pretty crazy that some of the images from New York City look apocalyptic, so I can only imagine what it's like in Canada. Yeah. Hope everyone is staying safe. We've had just an onslaught of news lately and we haven't had a chance to talk about this stuff on the podcast yet, but what was it? Two weeks ago now, the Department of Education released just a slew of proposed regulations on many, many topics. What all is in there, Jill?

Jill Desjean:

Yeah, so this is a new NPRM that came out, you said two weeks ago or so. It came out of the Institutional and Programmatic Eligibility Neg Reg sessions that were held in early 2022, so like January through March of 2022, and they cover a little bit of everything. So gainful employment is in there. There's something new called financial value transparency, which we'll get into a lot more in a minute. Financial responsibility regulations are in there, administrative capabilities, certification procedures, and ability to benefit, and the department also discussed other topics that they've already issued rules on, so those are out already. 90/10 rule and changes in ownership were in that same institutional programmatic eligibility session, but the final rules have come up for those already, so this is basically everything else that was in that early 2022 session.

Allie Arcese:

This was that group of regulations that was delayed. They had a number of topics that were pushed off to spring 2023.

Jill Desjean:

Yeah, yeah, right. They took their time in writing draft regulations, I guess. There was no real deadline, but ideally, I guess they would've had them out last year, so they could have published them on November 1 and had them effective now, and so they waited an extra year. Yeah.

Allie Arcese:

Yeah. That's a lot. What's the biggest thing in this NPRM from your perspective?

Jill Desjean:

So I will not try to cover all of that. You could read our comments if you want to learn more or our deep dive articles, which do cover them in a lot more detail, but I think today it's really important to highlight the new financial transparency framework because I don't think all of our members appreciate the impact that this will have on our schools. This financial value transparency piece of the regs applies to all

programs at all schools. So I think if you haven't had gainful employment programs in the past, there's a tendency to not pay attention to anything GE related. I know when I worked at a graduate school, when new Pell things came out, I thought, "Oh good, not for me," so I think if you work in a school without GE programs, you think, "Thank goodness I don't have to worry about GE."

And this was discussed as a part of gainful employment, so I think that it may not be getting the attention that it deserves because some people might think it doesn't apply to them, and even for schools with GE programs who may have been paying attention to this, there were just so many technical details of the GE regs that were included in this discussion like who's in your cohort? How are the metrics calculated? Et cetera. So I think even for them during Neg Reg, this financial value transparency stuff has taken a bit of a backseat in terms of impacts on your non-GE programs.

Allie Arcese:

And this was what ED had previously referred to as the low financial value-

Jill Desjean:

Yeah.

Allie Arcese:

... list.

Jill Desjean:

That's right.

Allie Arcese:

So yeah, they reframed it to more accurately capture what exactly they're getting at, but can you tell us a little bit more about what is in these regulations?

Jill Desjean:

Yeah, so essentially what the department is proposing to do is to create these two gainful employment metrics by which they'll measure whether a gainful employment program is preparing students for gainful employment. That's the GE framework that was around before GE was rescinded in 2019. No real big surprises there. They're going to use an annual and a discretionary debt-to-earnings ratio just like they have in the past iterations of GE. Then they're adding this new metric. It's called the earnings premium, and it will assess whether a program's graduates earn more than a high school graduate in either the institution state where the institution is located or the national high school graduate median earnings if more than half of enrolled students live outside the state the institution is located, so for distance ed programs.

So what's new is that these metrics that have always been used to measure gainful employment programs will be calculated for every program, GE programs and non-GE programs. There's never been a debt-to-earnings rate for non-GE programs. The earnings premium is brand new. It's never been out there for either, but these GE type metrics will be applied to all programs at all institutions. So for GE programs, they would still be subject to loss of title for eligibility if they failed either of these metrics in two of three years. For non-GE programs, there wouldn't be a loss of eligibility attached to the metrics. So it's a disclosure only framework for the non-GE programs, so even though they'll calculate these metrics for both, there's still this split as far as how they can be applied accountability-wise.

Non-GE programs, however, would have to have students complete an acknowledgement that they're enrolled in what ED is calling now a high debt program, what they had previously been referring to as a low financial value program. If that program failed the debt-to-earnings rate metric, either the annual or the discretionary DE metric, non-gainful employment programs wouldn't have to do anything if they failed the earnings premium metrics, so that acknowledgement applies only to the debt-to-earnings metric. It's not a warning like it is for GE programs. When GE programs are about to fail, if they failed either of those, they have to issue warnings to students, but it's a bit of a difference without a distinction. You're telling the student, "This program that you're enrolling in has a high debt burden. Are you sure you want to still enroll in this program?"

Allie Arcese:

Yeah, it's a matter of awareness.

Jill Desjean:

Yeah.

Allie Arcese:

Yeah, then a penalty per se. So we know that negotiators didn't reach consensus on gainful employment last year, and this financial value transparency was included in the GE discussions, or was it one of the deal breakers for negotiators?

Jill Desjean:

So interestingly, the department did bring up this concept of applying some gainful employment type disclosures to all programs, but what ED's proposing here is vastly different from what they covered in Neg Reg last year. So what they were proposing last year wasn't met with much opposition. Consensus wasn't reached mostly because of provisions related to the GE framework, but the reason there wasn't much opposition was because they didn't propose this. They proposed something pretty different. Back then, it was really just to require all programs, again, GE and non-GE, to provide some program level consumer information similar to what GE programs have historically always had to disclose. So this would be things like what occupation the program prepares a student for, median debt and median earnings of program completers, whether the program's accredited, job placement rates, licensure pass rates. The GE metrics, the debt-to-earnings ratio and the earnings premium would only have to be disclosed for GE programs as ED discussed during negotiated rulemaking.

Allie Arcese:

So what changed since ED's proposal during Neg Reg?

Jill Desjean:

So what the department was stressing last year during negotiations was that these GE metrics, the debt-to-earnings ratio and the earnings premium, would not be calculated for non-GE programs. So they were asking for disclosures of certain data, some of the inputs that actually go into the debt-to-earnings and the earnings premium calculations, but they weren't going to calculate and hence couldn't publish the gainful employment metrics for non-gainful employment programs. So negotiators never got the chance to discuss the merits of both calculating and disclosing those data points for non-GE programs because it wasn't on the table at the time. What they discussed, again, was just those inputs that go into the metrics. The other new thing is this high debt burden acknowledgement that students will have to

complete in order to have aid dispersed at non-GE programs that have a failing debt-to-earnings rate. That wasn't discussed at Neg Reg either.

So we have a few pretty big issues here. There's this philosophical issue of should non-gainful employment programs have to disclose metrics designed for gainful employment programs? Gainful employment programs are meant to have a short time horizon to a return on investment. Other programs aren't designed that way. We know that other programs, say liberal arts degrees, pay off over a lifetime much higher than what a gainful employment program might, but not always in a couple of years, and that's what these metrics measure, sort of a short term return on investment, and so there's a likelihood that some high quality programs that will deliver more lifetime earnings over the course of someone's career could fail these metrics due to the fact that the measurement is just too short of a timeframe after completion.

Another big issue is all of this student-level data reporting that schools will have to do in order to calculate those metrics. So they're like the... Should we even use GE metrics for non-GE programs? Never get a chance to talk about it. But then once you decide, "Yeah, we're going to use these GE metrics to calculate those metrics," the department needs a ton of data. They've always asked for that for gainful employment programs, and people with gainful employment programs have their own thoughts about that. Now, every program would have to be reporting things like the students' ZIP code and completion dates so they can put students into cohorts. They need the students' tuition and fees, they need to know their books and supplies because they're going to cap the debt and the debt-to-earnings calculation at that number. They need private loan debt because they're going to count that now in the debt-to-earnings calculation. And they're also asking for student-level data for the entire program for students who graduated or who withdrew from a program.

So how much did the student pay in tuition and fees over the length of their program? How much total institutional aid did they receive over the duration of their program? It's a lot of student-level data reporting, and the department doesn't have, in my opinion, a great justification to collect all the student-level data for non-GE programs other than to say they need it to calculate the debt-to-earnings ratio and earnings premium, but again, they didn't discuss calculating those metrics for non-GE programs during Neg Reg, so they're making this leap to calculate them and then this leap to collect all this data in order to calculate them, but none of this got discussed during Neg Reg. So it's not just that these metrics will be calculated in that philosophical level thing, it's also the huge burden of reporting all of this student-level data.

Allie Arcese:

Yeah. I think that's a really good point, and it's interesting for people to consider because from just a purely transparency point of view on the surface, it seems like it might make sense. We're collecting this data for these programs and why not do it for these, but like you pointed out, the time is the issue there, the short-term turnaround, and I think-

Jill Desjean:

Right. ED talks about comparison. They say, "Well, students might be applying to GE programs and non-GE programs. Why should they have this data for one and not for the other?" But if it's not telling you the same thing, it's not helpful.

Allie Arcese:

Yeah, it's an apples to oranges situation.

Jill Desjean:

Yeah.

Allie Arcese:

Yeah. So back to the reporting and the data, it sounds like ED is creating a student unit record system, which right now, they're prohibited from doing, right?

Jill Desjean:

That is right. So the department is justifying this data collection based on their authority to oversee the programs that they administer and to published data about those programs that they manage, but I don't know if that authority trumps the student unit record ban, which is still in statute, and just as a side note, NASFAA actually does support lifting that ban. We are pro-student data to be more transparent and help students to make informed decisions about college, but if that ban were lifted in statute, the department would have to conduct a negotiated rulemaking to decide which data elements they need to collect from schools.

Allie Arcese:

Everyone's favorite kind of party.

Jill Desjean:

They would get stakeholder feedback. Exactly. They would need to get stakeholder feedback, and so it feels a little bit like that department is circumventing a process here.

Allie Arcese:

As if that wasn't enough, is there anything else that we should know with all of this?

Jill Desjean:

Yeah, I feel bad because I know it is a lot. I really hope I've been super clear about what is for GE and what is not for GE, because I want people to be concerned and interested, but I don't want them to be panicked either, but-

Allie Arcese:

That's a good point to note too, is there's still public comment. These are not the final regs.

Jill Desjean:

Right.

Allie Arcese:

So no alarms yet.

Jill Desjean:

Yes, and it's not as though that the entire GE framework is being applied to every GE program. There are very important distinctions, but there is an awful lot more being asked of non-GE programs than was before, and there is another thing before... Just so we can get people even more confused. Actually, it's

not in the gainful employment regs or in this new section of the regulations they created for the financial value transparency framework. It's in the certification procedure section of the regs, which is a part of the institutional eligibility to participate in the Title IV programs. So the department certifies the school's eligibility to participate in Title IV based on whether the school meets or continues to meet the eligibility requirements for participation, and the department can choose to provisionally certify a school for certain reasons, which could ultimately lead to a loss of eligibility if schools didn't get their act together.

The department is now proposing to add those gainful employment metrics, the debt-to-earnings ratio and earnings premium measure, as what they call supplemental or supplementary performance measures in the certification procedures regs for the department to use as a factor in approving or re-certifying an institutions Title IV eligibility. So certification procedures regs apply to all institutions. This new language would give ED the authority to put a school on provisional certification status because one of their non-GE programs failed the GE metrics. So ED would likely say they wouldn't do that. They wouldn't provisionally certify an entire institution because one non-GE program didn't pass the earnings premium metric. It's meant to be just one factor. It is a "may" versus a "shall" in the language, and it says ED could consider this among other information at the program or institutional level.

Nevertheless, that authority is there, and so a thing the department has always said is, "We can't apply the gainful employment framework to non-gainful employment programs. We can't tie it to them in terms of accountability. We can't say you lose eligibility if you're a non-GE school. We can only do that for GE schools," but putting this into the certification procedures language would now actually give the department an ability to tie institutional eligibility to gainful employment metrics that aren't intended for non-GE programs, but that are being applied to non-GE programs. So that's pretty concerning language. All in all, when taken together, I think there would've been a lot more discussion at Neg Reg if ED had proposed what's in this NPRM back then as relates to this financial value transparency framework. Negotiators already felt as though GE wasn't given enough time, and this financial value transparency stuff was a very, very small part of that discussion.

Allie Arcese:

Yeah, and I was just thinking the whole GE discussion goes back a decade... over a decade. In the past, there have been entire negotiated rulemaking sessions dedicated solely to gainful employment, and this was just one of a number of topics in this one.

Jill Desjean:

Yeah, and negotiators expressed a lot of disappointment in the department for giving them so little time to talk about such a big topic. They had a couple of days during those three weeks that were devoted to GE and they all felt like they could have benefited from more time, and to throw this here with it, it really, I think, got forgotten.

Allie Arcese:

And the statutory authority part is interesting too, because that's been a big sticking point all along. There's some folks who say, "Just apply it to everyone," and they say we can't. That's a really interesting point that you bring up. When I think about all of this, I think of... I don't know if you guys know that meme with the cartoon dog that's just sitting, drinking coffee in a room that's on fire and he just sips his coffee and goes, "This is fine." That's how I feel like a lot of people are right now when they hear all of this, or maybe our members listening to this episode are just like, "This is fine." Everything's on fire.

Jill Desjean:

I know, and our poor members who just have sat through... The Department of Ed, just had a webinar in FAFSA simplification. TRA just had one yesterday, and judging by the questions and the reactions, I think people are feeling a tad overwhelmed.

Allie Arcese:

Just a little.

Jill Desjean:

As well they should be, and so actually, I feel guilty for talking about this today because I feel like people [inaudible 00:18:56]-

Allie Arcese:

How dare you?

Jill Desjean:

"Really, Jill? Where's the good news?"

Allie Arcese:

But we are submitting comments on these changes, obviously. Can you tell us about what our comments are going to focus on? Are we just going to send them that meme?

Jill Desjean:

That's a great idea. I don't know if-

Allie Arcese:

That would take some work off of your plate.

Jill Desjean:

... the rulemaking portal allows submission of memes. I think I can only upload Word documents, but I'll try. Yeah, so maybe that's the good news. NASFAA's commenting on this, everyone, so rest assured we got this. We're going to focus a lot on procedure here. We do have concerns about the merits of applying the GE metrics to all programs, and we'll definitely comment on that, but we also really want to call out the department for making such huge changes without discussing them during Neg Reg. Stakeholders just didn't have a lot of say on what the department is proposing here with respect to this financial value transparency framework, so we don't think ED should be able to move forward with this at all really until they've appropriately engaged stakeholders.

Allie Arcese:

Yeah. What are the next steps here?

Jill Desjean:

So comments are due June 20th. We will get them submitted by or probably on that date, and then the department will take some time to read them. They have to read them all, and I think they'll get a lot.



From there, they will issue their final rules, incorporating any changes they've decided to incorporate from the public comments, and if they're able to issue those final rules by November 1, the rules will become effective next July, July 1, 2024. If issued after November 1, the rules would be pushed back another year.

Allie Arcese:

Okay. So either about roughly one year from now or two years from now-ish.

Jill Desjean:

Yeah.

Allie Arcese:

Thank you for diving into all of that and recapping it for everyone and just making sense of all of this. We're going to move over to David now, who has some updates related to FAFSA simplification. We've been talking a lot about FAFSA simplification for obvious reasons. Well, what are we going into today?

David Tolman:

Yeah, well, more of everything is fine. Let's pull your meme out. I'm not quite as shocked as what I just heard Jill talk about. This is something that has been around for a while, but some schools are realizing the impact of the housing status question disappearing from the FAFSA beginning in 2024, '25, and that's caused a lot of schools to worry. That's not news. We've known that for a while. Just want to highlight an article that was recently published in the AskRegs database; Can a School Assume Housing Status when Packaging Students, which represents some guidance that we've received recently from the Department of Education.

Allie Arcese:

Yeah, I've heard a lot about that topic. So can you summarize the issue for any listeners who might have missed what's going on with all of this?

David Tolman:

Well, the issue is housing status isn't used to calculate a student's EFC or soon to be the Student Aid Index or SAI, but it is an important factor when a school assigns a student their cost of attendance. Housing status can make a big difference to a student's COA and therefore their financial need, and so without that question, it will make that assignment more difficult.

Allie Arcese:

Yeah. So why was it removed?

David Tolman:

The simple version answer is the department is limited by statute on the types of questions that it can include in the FAFSA. They can only include those items that are designated by Congress to be included, or those items used to calculate the Student Aid Index, and although housing status affects a student's financial need, it's not in the formula for calculating the SAI, and so as a result, the FAFSA cannot collect it, but with that, one thing the law did was expand the addition of housing categories beginning in the current or the upcoming award year 2023, '24, and so with those expanded categories missing this piece

of information about the student's housing status plans... will make it more difficult for schools to correctly assign that right housing status category.

Allie Arcese:

What are some of those categories that were added?

David Tolman:

Yeah. So the minimum categories for housing and food used to be room and board, but now housing and food, part of living expenses, are no dependents and the student's living on campus, or the student is living on campus and does have dependents, the student's living off campus, the student is living with parents, the student is living on a military base or receiving a basic allowance for housing, and then the catchall category for all other students.

Allie Arcese:

So with this question removed, can schools create a separate application or another form or even just a question for students to report their housing status?

David Tolman:

Well, the good news is yes, they can use a form, but the bad news is it cannot require the form to be completed before dispersing aid.

Allie Arcese:

Yikes. Why is that?

David Tolman:

Well, that goes back to law again. Congress has stated that the only form students must complete for receiving Title IV aid is the FAFSA. So all those schools can ask students to report their housing status. They should have a plan B if the student doesn't report it before aid is ready to be dispersed, and that plan B cannot be, "We're going to withhold your disbursement until you report your housing status."

Allie Arcese:

Yeah. So it seems like schools, their hands are tied. What can they do? What options do they have?

David Tolman:

Yeah, it is tied, but there's flexibility here. First thing, they should create a policy on how they're going to determine the student's housing status, and then they are allowed to assume what a student's housing status will be based on their policy, if they're following it and they're consistent. Then they can ask students to correct the assumption, and then the important piece, consumer information piece, is inform students of the impact that housing status has on their eligibility and why they should correct it if the school's made an incorrect assumption. So ideally, the institution would know the student's housing status before they package. If the school does know it, however they've obtained it, they need to use it, but otherwise, an assumption does work. So let's look at a few examples, especially the type of schools.

It might be easier. If it's a residential school where all students pretty much are living on campus because it's in a smaller town and there's not very many options, that's one extreme. Or maybe the campus has a policy that living on campus is compulsory for first-year students. So using on-campus

status assumption for most students would be okay. Or it's a commuter campus, there's either limited housing options or no housing options on campus. So what they have is a mixture of students who are living with their parents and students who are living off campus. So maybe the assumption the school can make, put in their policy, ask students to correct, is maybe assume dependent students are living with their parents and independent students are living off campus, but there's also other ways of doing it, looking at information about the student, such as the student's permanent address if it's collected.

So if the permanent address is not local, assume on campus or off campus, maybe crosscheck that with your on-campus housing records. If the permanent address is local, you could go back to that, assuming they live with parents, if they are a dependent student or maybe living off campus if they're independent. Also, if the student has confirmed it in one year, so it is still an element on the 2023-24 FAFSA. A school can use the prior year's housing status reported by the student for that year, and then just carry it forward, ask the student to correct it if it's not a correct assumption. Other schools have added that question, the housing status question, to their admissions application in anticipation of the removal, just so they have a starting place so they can start rolling things forward if they haven't completed a FAFSA in the past, and then if packaging after the academic year has begun, then look for the student's address. If it's on campus, then assign them the on-campus housing allowance.

Allie Arcese:

Wow. Those are a lot of examples and some smart workarounds there with adding it to the admissions application. Any final advice for schools?

David Tolman:

Yeah, in that article, and we'll put a link to that article in the notes, but the department acknowledges this predicament that schools are in, and they've got to work with the best information that they've got. They cannot hold up a student's aid so their hands are tied. So they realize this, and as long as schools are making a reasonable effort when they are packaging students or assigning a cost of attendance, the department's going to recognize that, stick to their policy, and yeah, it is a challenging time, all these changes that are being made, and this is just one piece, but look at that AskRegs article, and then for more detail about FAFSA simplification, because we're just talking probably about one bullet point that was on a webinar yesterday and Jill talked about the webinars that have recently been... or came out this week, and I really like NASFAA's webinar yesterday on FAFSA simplification. Tiffany and Jackie did an excellent job and Jill moderating on that as well, so those are some other resources.

Allie Arcese:

Yeah, and we'll be sure to link all those in the show notes. Thank you, David. Thank you, Jill. Super helpful as always, and now we have Hugh Ferguson, our senior reporter and podcast producer with a brief news recap. It's still been a busy week outside of all the regulatory stuff. What do you have for us, Hugh?

Hugh Ferguson:

Yeah. It's been a busy week, but the big news of the week came from the White House where they ended uncertainty around whether or not the US would breach the debt ceiling with President Biden formally signing the bipartisan debt ceiling bill into law over the weekend. This formally kicks off the appropriation season now, sets spending caps for the upcoming spending bills and directly impacts the Department of Education, and the law also provides some clarity on the resumption of student loan repayments by codifying the administration's planned resumption of student loan repayments, while

also preventing another possible extension by sunseting the pause and interest accrual to 60 days after June 30th of this year.

Allie Arcese:

Yeah, so it is a 100% for sure, no further extension of the repayment pause. Payments will resume in September. Yeah. What else?

Hugh Ferguson:

Yeah, so then other news coming from the White House this week was that President Biden on Wednesday formerly vetoed the resolution that aimed to overturn the administration's student loan forgiveness plan and immediately end the pause on federal student loan payments. This was largely expected and we were just waiting to see when the president would issue the veto, and so now the issue is currently before the Supreme Court, and we've been patiently refreshing our browsers to see when a decision will drop on this issue, and there are roughly... I think by my count, it's two dozen cases remaining before the court, and we're expected to hear more decisions next Thursday, June 15th.

Allie Arcese:

Yeah, it seems like the Supreme Court has been handing down decisions Thursday mornings, so that's where we've been the last couple Thursdays, 10:00 AM, refreshing for those opinions, and we'll be on that next week, but be sure to stay tuned to Today's News and "Off the Cuff". Thanks for joining us, everyone. Be sure to subscribe, tell a friend, send us your comments and questions, and we will talk to you again soon.