

**Professional Judgment**

Bruce Honer | October 2017  
U.S. Department of Education  
NAFAA Fall Conference

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**Agenda**

- Professional Judgment Basics
- Adjusting Cost of Attendance
- Adjusting EFC Data Elements
- Adjusting COA vs. EFC elements
- Performing a Dependency Override
- Parent Refusal to Complete FAFSA and Provide Support
- Denying or Reducing Direct Loans

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**Professional Judgment Basics**

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### What is Professional Judgment?

*HEA Sec. 479A(a) IN GENERAL — Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances*



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### What is Professional Judgment?

- The term “professional judgment” can be found in the Code of Federal Regulations, but there are no regulations for the practice
- The law does not use the term “professional judgment”
  - The Higher Education Act refers to the financial aid administrator’s authority to make adjustments, on the basis of documentation, to allow for treatment of an individual with **special circumstances**



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### What Professional Judgment is Not

- What a professional judgment cannot be used for:
  - A professional judgment is award year specific and cannot carry forward from year to year unless subsequent requests are made and subsequent documentation obtained
  - You cannot directly change an EFC
  - You cannot make changes to the EFC formula
  - You may not establish automatic categories of special circumstances and provide identical outcomes to all students in that circumstance
  - All professional judgments must be conducted on a case by case basis



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### What Professional Judgment is Not

- What a professional judgment cannot be used for (cont.):
  - You must not use a professional judgment to circumvent the regulations or the law
  - You must not use professional judgment to waive student eligibility requirements
  - You cannot use a professional judgment to make an otherwise independent student dependent
  - Dependency overrides, as we'll discuss later, is a one-way option from dependent to independent
  - You may not make a dependent student independent based solely on the student's demonstrated self-sufficiency

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### Professional Judgment Documentation

The Higher Education Act uses the phrase, "on the basis of adequate documentation." While the Department of Education does not define adequate documentation, the documentation should be such that an auditor or program reviewer must be able to gain understanding from the documentation. Documentation should also be such that the institution has satisfied itself in the belief that proper action has been taken.

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### Professional Judgment Documentation

- Documentation considerations:
- Should be "adequate and reasonable"
  - Use 3<sup>rd</sup> party documentation when possible
  - Can never have too much documentation
  - Remain flexible on documentation types

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### Professional Judgment is a Choice

- Exercising Professional Judgment is at the discretion of the school and is a matter of policy
- It is within a school's right to refuse a professional judgment as a matter of policy
- If a school decides to conduct a professional judgment, a policy must be in place
- A school is not obligated to exercise a professional judgment for a student if conducted at another school

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### Professional Judgment & Verification

- If a student is selected for verification, the verification process must be complete before exercising a professional judgment
- The results of the verification and professional judgment cannot be submitted on the same day
  - After the school receives the ISIR resulting from verification, the school would use the resulting ISIR transaction to make adjustments for the professional judgment

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## Cost of Attendance Adjustments

**HEA Sec. 479A(a)**  
*"Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case by case basis to the cost of attendance. . . to allow for treatment of an individual eligible applicant with special circumstances."*

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**Cost of Attendance Adjustments**

Each cost of attendance component for a student is an estimate of the student's educational expenses. Typically, most schools use average costs rather than actual expenses. Financial aid administrators are given the latitude to adjust any of these components on a case-by-case basis to allow for special circumstances.

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**Cost of Attendance Elements**

- Tuition
- Fees
- Books
- Supplies
- Transportation
- Miscellaneous Personal Expenses
- Room and Board
- Dependent Care
- Licensure Costs
- Costs associated with Study Abroad
- Disability related expenses

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**EFC Data Element Adjustments**

**HEA Sec. 479A(a)**  
*"Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case by case basis . . . to the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances."*

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**Adjust EFC Data Elements**

- This type of professional judgment gives the FAA the latitude to modify one, or more, of the data elements listed on the FAFSA which are used in the EFC formula
- It is important that the school choose an element and value that is appropriate to the student's special circumstances
- Understanding the EFC formula, as described in the AVG Chapter 3, can help the FAA make a more appropriate decision

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**Specific Data Element Adjustment Guidance**

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**IRA Roth Conversions**

- When converting a regular IRA into a Roth IRA by transferring funds, the amount converted has to be reported as taxable income
- This results in a higher income reported on the FAFSA, even though the family doesn't have additional income or assets available
- Schools can use PJ to adjust the income and taxes as though there was no Roth conversion
- Schools are not required to perform this type of PJ

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### Unemployment Benefits

- DCLs GEN 09-04 & GEN 09-05: Use of Professional Judgment by Financial Aid Administrations
  - Unemployment benefits can be reduced to zero as ED, in consultation with the Dept. of Labor and OMB, have determined the maximum benefit will not have a significant impact on the EFC for an Independent Student
  - If other family members are receiving unemployment benefits, schools are encourage to examine the family's economic situation and make appropriate adjustments

*GEN 11-04 clarifies that these DCLs are still in effect*

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### Unemployment Benefits (cont.)

- Documentation: Letters for unemployment insurance issuance from state unemployment agencies can be used for up to 90 days from date of issue
- Documentation: Other verification of current receipt of unemployment benefits is an acceptable substitute for the state unemployment agency letter
- Schools should make an effort to determine if the student or family members is still unemployed before applying this provision

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### Prior-Prior Year Data

- G-Q1: Will FAFSA applicants have an option to use tax year 2016 income and tax information?

G-A1:

- No. Beginning with the 2017-2018 FAFSA, students and parents will be required to use income and tax information from the 2015 tax year. However, a financial aid administrator (FAA) **may use professional judgment** to change any of the income or tax items by using the 2015 (or any other recent 12 month period) income and tax information, if the FAA determines that there are extenuating circumstances that justify the use of information other than the 2015 tax year information. **The fact that the student might be eligible for more aid based upon the use of 2016 information is not, by itself, sufficient reason for an FAA to make a professional judgment decision to use 2016 income.** [April 12, 2016]

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**Prior-Prior Year Data**

- Since prior-prior year data may be significantly different than prior year data, schools may see more cases to justify the use of PJ to adjust income data elements upward or downward
- While schools may identify a category of students who have similar circumstances, they may not automatically provide identical treatment to students in that category
  - Each PJ case must be determined and documented on a case-by-case basis

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**Prior-Prior Year Data**

- When making an adjustment to income data elements, a school can use any 12 month period that it determines best demonstrates the family's financial strength
- If satisfactory documentation is obtained, 12 month periods may include, but are not limited to:
  - Prior year income data
  - Past 12 months income data from time of request
  - Anticipated income data for the financial aid award year
  - Anticipated income data for the current calendar year

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**Income Protection Allowance (IPA)**

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### Income Protection Allowance (IPA)

- Understanding the Income Protect Allowance (IPA) in the EFC formula can be helpful in adjusting an EFC data element
- The IPA is an allowance value in the EFC formula that directly reduces the AGI
- A school can determine the IPA by reviewing Page 3 of the student's ISIR under Intermediate Values
  - It is the value labeled IPA

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### Income Protection Allowance (IPA)

- IPA element breakdown is as follows:
  - 30% for food
  - 22% for housing
  - 9% for transportation
  - 16% for clothing and personal care
  - 11% for medical expenses
  - 12% for other family consumption

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### Income Protection Allowance (IPA)

Example:  
 Knowing that a student has an IPA of 7780, you can determine that the formula took into account \$856 for medical expenses (11% of 7780). If a student provides documentation that \$2856 will be spent on out of pocket medical expenses, you have the ability to adjust either the AGI or taxes paid for the difference of \$2000.

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## Adjusting COA Versus EFC Data Elements

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### Adjusting COA VS. EFC Data Elements

**Adjusting COA:** Generally, when making an upward adjustment of a COA element, the intent is to **potentially** increase the student's need based and/or non-need based aid eligibility

- Since COA does not often alter the amount of Pell, there is typically no change in the amount of Pell a student will receive under a COA adjustment

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### Adjusting COA to Affect Eligibility

|                            |   |
|----------------------------|---|
| <u>COA Prior to PJ</u>     | <u>Award</u>                            |
| Tuition/Fees: \$7,200      | COA 16,300 Need = 9,100                 |
| Books/Supplies: \$1,300    | EFC 7,200                               |
| Transportation: \$1,080    |   |
| Misc. Expenses: \$ 900     | <u>Need Based</u> <u>Non-Need Based</u> |
| <u>Room/Board: \$5,820</u> | Grant 7500 DL Unsub 3900                |
|                            | <u>DL Sub 1600 PLUS 3300</u>            |
|                            | 9100                      7200          |
| Total: \$16,300            | Total Aid: \$16,300                     |

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### Adjusting COA to Affect Eligibility

\$2700 Adjustment to COA

|                     |                |                   |                        |
|---------------------|----------------|-------------------|------------------------|
| <u>COA After PJ</u> |                | <u>Award</u>      |                        |
| Tuition/Fees:       | \$7,200        | COA               | 18,000↑ Need = 10,800↑ |
| Books/Supplies:     | \$1,300        | EFC               | 7,200                  |
| Transportation:     | \$1,080        | <u>Need Based</u> | <u>Non-Need Based</u>  |
| Misc. Expenses:     | \$3,600↑       | Grant             | 7500 DL Unsub 2200↓    |
| <u>Room/Board:</u>  | <u>\$5,820</u> | DL Sub            | 3300↑ PLUS 5000↑       |
|                     |                |                   | 10800 7200             |
| Total:              | \$18,000↑      | Total Aid:        | \$18,000               |

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### Adjusting COA VS. EFC Data Elements

**Adjusting EFC Data Elements:** Generally, when adjusting EFC Data elements, the intent is to lower the EFC to potentially increase Pell eligibility and/or other need-based aid.

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### Adjusting EFC to Affect Eligibility

Award Prior to EFC Adjustment

|                   |                       |          |        |
|-------------------|-----------------------|----------|--------|
| COA               | 16,300                | Need =   | 10,300 |
| EFC               | 6,000                 |          |        |
| <u>Need Based</u> | <u>Non-Need Based</u> |          |        |
| Grant             | 7500                  | DL Unsub | 2700   |
| DL Sub            | 2800                  | PLUS     | 3300   |
|                   | 10300                 |          | 6000   |
| Total Aid:        | \$16,300              |          |        |

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**Adjusting EFC to Affect Eligibility**  
 EFC Adjustment to Account for Out of Pocket Medical Expenses

**Award After EFC Adjustment**

|                   |         |                                  |       |
|-------------------|---------|----------------------------------|-------|
| COA               | 16,300  | Need = 12,100↑                   |       |
| EFC               | 4,200↓  |                                  |       |
|                   |         | Total Aid Eligibility = \$16,300 |       |
| <u>Need Based</u> |         | <u>Non-Need Based</u>            |       |
| Pell              | 1770*   |                                  |       |
| Grant             | 7500    | DL Unsub                         | 2670↓ |
| DL Sub            | 2830↑   | PLUS                             | 1530↓ |
|                   | 12,100↑ |                                  | 4200↓ |

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**Dependency Override**

HEA Sec. 480(d)(7)  
 States that a student who does not qualify as an "independent student" in one or more of the 13 categories, as defined in Step 3 of the FAFSA, may be considered an independent student if he or she; . . . is a student for whom a financial aid administrator makes a determination of independence by reason of other unusual circumstances.

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**Dependency Override**

Section 480(d)(7) provides the financial aid administrator with great latitude in determining what constitutes unusual circumstances.  
 However, in accordance with DCL GEN 03-07, there are four identified conditions that individually, or in combination, do not merit unusual circumstance.

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**Dependency Override (GEN 03-07)**

For purposes of dependency override, the following conditions do not merit unusual circumstance:

- Parents refusing to contribute to the student's education;
- Parents unwilling to provide information on the application or for verification;
- Parents not claiming the student as a dependent for income tax purposes;
- Students demonstrating total self-sufficiency
- Parents live separately from student or in a foreign country (GEN 11-15)

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**Dependency Override**

- GEN 03-07 further recognizes that unusual circumstances could include an abusive family environment or abandonment by parents
- GEN 11-15 provides examples as it relates to a family crisis or unlawful act wherein a dependency override might be considered

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**Parent Refusal to Complete FAFSA & Provide Support**

**HEA Sec. 479A(a)**  
*"... In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator . . . to offer a dependent student financial assistance under section 428H or a Federal Direct Unsubsidized Stafford Loan without requiring the parents of such student to file the financial aid form prescribed under sections 482 if the student financial aid administrator verifies that the parent or parents of such student have ended financial support of such student and refuse to file such form."*

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**Parental Refusal**

*Prior to introducing this new category of PJ, a student whose parents refused to complete the FAFSA and refused to provide financial support would be ineligible for any Title IV student aid. With this provision in place, the school can now exercise professional judgment and make the student, in this situation, eligible for a Dependent Level Unsubsidized Direct Loan ONLY.*

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**Parental Refusal to Complete FAFSA / Support**

- Provision does not act as a dependency override. The student under this provision is still a dependent student
- A non-custodial parent may still borrow a PLUS loan and the student would still be eligible for this provision
- If parents are unwilling to sign a statement the school must obtain confirmation/information from a 3<sup>rd</sup> party

*For documentation purposes, the custodial parent (if not married) or both parents (if married) must sign a statement indicating a refusal to provide both support and the FAFSA data*

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**Denying or Reducing Direct Loans**

**34 CFR 685.301(a)(8)**

*(8) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if -*

- (i) The determination is made on a case-by-case basis;*
- (ii) The documentation supporting the determination is retained in the student's file; and*
- (iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.*

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**Denying or Reducing Direct Loans**

If the reason is documented and provided to the borrower in writing:

- A school has the option to refuse to originate
  - Direct Subsidized Loan
  - Direct Unsubsidized Loan
  - PLUS Loan
- May reduce the borrower's determination of need for the loan
  - Originate a loan for less than what the borrower would otherwise be eligible to receive

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**Denying or Reducing Direct Loans**

- The denial or reduction of the loan can be done if:
  - The determination is made on a case by case basis
  - The school provides the reason to the student in writing
  - The documentation supporting the determination is retained in the student's file: and
  - The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income

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**Resources**

Federal Student Aid Handbook  
Application and Verification Guide CH. 5

Federal Regulations – 34 CFR

- 685.301(a)(8) Denying or Reducing Direct Loans

Higher Education Act (HEA)

- HEA Sec. 479A General
- HEA Sec. 480(d)(7) Dependency Override

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**Resources (Continued)**

Dear Colleague Letters

|           |   |
|-----------|---|
| GEN 03-07 | Dependency Overrides                            |
| GEN 11-15 | Dependency Overrides                            |
| GEN 08-12 | Parent Refusal to Provide FAFSA Data & Support  |
| GEN 09-04 | PJ & Family Financial Circumstances             |
| GEN 09-05 | PJ for Unemployment Benefits                    |
| GEN 11-04 | PJ & Combat Pay Reminder; Extends 09-04 & 09-05 |
| GEN 11-07 | Denying or Reducing a Direct Loan               |
| GEN 16-03 | Prior-Prior Year and Professional Judgment      |

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**Department of Education Contacts**

Research and Customer Care Center  
800.433.7327  
fsa.customer.support@ed.gov



Reach FSA  
855.FSA.4FAA -- 1 number to reach 10 contact centers!

|          |  |
|----------|--|
| eZ-Audit | Campus Based Call Center                 |
| COD      | School Eligibility Service Group         |
| CPS/SAIG | Foreign Schools Participation Division   |
| NSLDS    | Research and Customer Care Center        |
| G5       | Netnet Total & Permanent Disability Team |

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**Contact Information**

Contact me with follow-up questions about this session:

Bruce Honer, FSA Trainer  
 bruce.honer@ed.gov | (415) 486-5521



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**Training Feedback**

To ensure quality training we ask all participants to please fill out an online session evaluation

- Go to: <http://s.zoomerang.com/s/BruceHoner>
  - Evaluation form is specific to Bruce Honer
- This feedback tool will provide a means to educate and inform areas for improvement and support an effective process for "listening" to our customers
- Additional feedback about training can be directed to joann.borel@ed.gov; 936-201-3298

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**QUESTIONS?**



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