

## LEGAL FACT SHEET

### FINANCIAL AID FOR CHILDREN OF KIN CAREGIVERS

#### Introduction

Grandparents and other kin caregivers face the daunting challenge of ensuring financing for the education of their children. As the cost of tuition continues to rise, securing the maximum need-based aid is essential. This article will discuss two main issues facing families that are sending kids to college. First, the article will explain nuances of filing the FAFSA for applicants with kin caregivers. Second, the article will offer options for grandparents and others who wish to give financial assistance to applicants without inadvertently reducing the financial aid students receive.

One of the first steps in obtaining need-based financial aid for college-bound students is filing the Free Application for Federal Student Aid (FAFSA). Need-based aid is granted as an amount equal to cost of attendance (CoA) minus the expected family contribution (EFC). In other words, need-based aid is the difference between the cost of attending college and the anticipated amount of money the family will be able to use to pay for college. The FAFSA is used to determine the financial status of the student and parents. The complex and lengthy document has strict rules requiring financial information of parents. Many applicants are unaware that leaving out certain required information, such as financial information of parents, will render them unable to receive most need-based aid. This section will help students in kinship caregiver situations navigate this tricky but important process.

One critical question for filing the FAFSA is whether the applicant is considered “independent” or “dependent.” The reason this distinction is important is because parents’ income and financial information is considered if the applicant is “dependent,”<sup>1</sup> but it is not considered if the applicant is “independent.”<sup>12</sup> An applicant is considered “independent” if any of the following are met<sup>2</sup>:

- 24 years or older;
- Orphaned, in foster care, or “a ward of the court, at any time after age 13”;
- Emancipated minor<sup>3</sup> or was or is in a legal guardianship, as determined by a court order;
- Veteran or currently serving on active duty in the U.S. armed forces;
- Working on a master’s or doctorate degree;
- Married;
- Has children or dependents; or
- Homeless.

Applicants who do not fall into one of the above listed categories are treated as “dependent.” Dependent applicants are required to provide financial information for their parents on the FAFSA. The FAFSA defines “parent” to include only “biological, adoptive and stepparents,” not “foster parents, legal guardians, and

<sup>1</sup> U.S. Department of Education, “The EFC Formula, 2014-2015,” pg. 3, viewed at <http://ifap.ed.gov/efcformulaguide/attachments/091913EFCFormulaGuide1415.pdf>

<sup>2</sup> U.S.C. 1087vv(D)(1). See also FinAid, “Dependency Overrides,” viewed at <https://studentaid.ed.gov/fafsa/filling-out/dependency> (hereinafter “FinAid”), and MFY Legal Services, “Long-term Consequences of Kinship Care: Overcoming Obstacles to Higher Education Funding,” 2014 (hereinafter MFY Legal) viewed at <http://www.mfy.org/wp-content/uploads/FAFSA-white-paper.pdf>

<sup>3</sup> It is important to note that while New York law recognizes and “emancipated status,” there is no emancipation statute or court proceeding in which an Order of Emancipation can be obtained, therefore independence by court order of emancipation is not available to most applicants that live in New York.

## LEGAL FACT SHEET

relatives” and a dependent applicant is only required to provide parental information.<sup>45</sup> Although an applicant lives with a kinship caregiver, the applicant will need to report income from parents who still have parental rights if no legal guardianship or foster care has been established. Parents’ income will affect financial aid in these situations, as the FAFSA presumes the parents are helping pay for college.

There is, however, a way for applicants that are otherwise considered “dependent” to be treated as “independent” (and therefore be exempt from submitting parental financial information and having parents’ income count against financial aid received). Financial aid administrators may, on a case-by-case basis, may make adjustments to the expected family contribution, a decision that is commonly referred to as a “dependency override.”<sup>5</sup> The dependency override occurs when “a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.”<sup>6</sup> Unfortunately, this exception has been construed by the Department of Education to be very narrow; so narrow, in fact, that it does not help most kin caregivers.

In a May 2003 “Dear Colleague Letter,” the Department of Education set forth scenarios that do not qualify as “unusual circumstances” or merit a dependency override, including: “1. Parents refusing to contribute to the student’s education; 2. Parents unwilling to provide information on the application or for verification; 3. Parents not claiming the students as a dependent for income tax purposes; 4. Student demonstrating total self-sufficiency.”<sup>6</sup>

In a July 26, 2011 “Dear Colleague Letter,” the Department clarified situations that might warrant a dependency override, including “the student’s voluntary or involuntary removal from the parents’ home due to an abusive situation that threatened the student’s safety and/or health, the student’s abandonment by the parents, or the inability of the student to locate the parents.”<sup>7</sup> The Department provides as an example of an unusual circumstance a lesbian student who is disowned by her parents for being a lesbian.<sup>8</sup> These parameters for the Dependency Override continue in force today.<sup>9</sup>

It is important to note that the financial aid administrator has discretion in issuing the dependency override, so it is important to advocate for why a situation requires an override. For example, while a parent simply refusing to provide financial support to the child does not qualify for an override, abandonment does qualify. If you believe that a dependency override is warranted, it is important to gather and submit documentation to support why that is true (e.g. showing that the parent is not merely refusing support but rather has abandoned the child). Evidence should include a letter from a third party (e.g. teacher, counselor, medical authority, member of clergy, etc.) or official document such as a court order, and not simply be a statement by the child or family member.<sup>8</sup> The dependency override must be reaffirmed every year.<sup>10</sup>

<sup>4</sup> U.S. Department of Education, Application and Verification Guide 2014-2015 (May 2014), page AVG-27, viewed at <http://ifap.ed.gov/fsahandbook/attachments/1415AVG.pdf> 5 20 U.S.C. §1087tt.

<sup>5</sup> U.S.C. §1087vv(D)(1)(I).

<sup>6</sup> Dear Colleague Letter from Deputy Assistant Secretary for Policy, Planning, and Innovation, GEN-03-07 (May 2, 2013), viewed at <http://ifap.ed.gov/dpcletters/GEN0307.html>

<sup>7</sup> Dear Colleague Letter from Assistant Secretary, Office of Postsecondary Education, GEN-11-15 (July 26, 2011), viewed at <http://ifap.ed.gov/dpcletters/GEN1115.html> 9 Id.

<sup>8</sup> Id. At AVG-124.

<sup>9</sup> U.S. Department of Education, Application and Verification Guide 2014-2015 (May 2014), page AVG-123, viewed at <http://ifap.ed.gov/fsahandbook/attachments/1415AVG.pdf>

<sup>10</sup> Application and Verification Guide 2014-15 at AVG-123.

## LEGAL FACT SHEET

The financial aid administrator may also on a case-by-case basis make a “Professional Judgment” (PJ) adjustment to the student’s cost of attendance or the data used to calculate estimated family contribution.<sup>11</sup> PJ adjustments are also discretionary, must be documented (preferably by a third party), and be related to special circumstances.<sup>12</sup> This may be a possible option when the dependency override is not available but a parent’s income has change substantially or the parent has become homeless or incarcerated.

If a dependency override is not available, applicants must consider other ways to fund education. In a situation where the child is considered dependent but the parent refuses to provide support or documentation regarding their finances, the applicant will not be eligible for most forms of federal financial aid (including the more desirable grants and subsidized loans), but may still receive unsubsidized Stafford loans only.<sup>10</sup> To do so, the child must provide either a statement from their parent or from a third party supporting the lack of support.<sup>13</sup> The child may also be eligible for merit-based or program-focuses scholarships and should consult with the school’s financial aid officer to explore all possible funding options.

Given the financial limitations that are created by being considered dependent, it is important for a kin caregiver to plan ahead regarding the effects that legal custody or guardianship will have upon the financial aid application of the child in their care. A child who is under legal guardianship will be considered independent, but a child whose kin caregiver only has custody will be considered dependent. Also, because a legal guardian is not considered a “parent,” their financial information is not considered financial information is not considered in the FAFSA, so an applicant in these circumstances would likely receive high need-based aid because she would have a low Expected Family Contribution.<sup>14</sup>

### How Kin Caregivers Can Help Students Pay for College

Given the steady rise in the cost of attending college, many grandparents, and perhaps other relatives or friends, want to help pay for college. While it seems like a straightforward concept, the timing and manner of financial support are important. Giving money to the student at the wrong time or in the wrong way can negatively impact the amount of need-based financial aid the student receives because financial gifts made by caregivers may affect financial aid of applicants.<sup>15</sup>

One way a nonparent can help a student pay for college is with a cash gift to the student (or to the student’s parents). An individual may give a gift up to \$14,000 per year to each done without paying a gift tax, and a married couple can give \$28,000.00 without paying tax.<sup>16</sup> A gift directly to student may reduce need-based aid the student receives because the FAFSA takes into account income from the year prior to that school year. To avoid this problem, cash gifts can be made either before January 1st of the student’s junior year of high school or after January 1st of the student’s senior year of college (assuming the student will not continue with graduate studies or other schooling).<sup>17</sup>

<sup>11</sup> Id. At AVG-121.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> MFY Legal at 15.

<sup>15</sup> <https://fafsa.ed.gov/index.htm>

<sup>16</sup> IRS, “Frequently Asked Questions on Gift Taxes,” updated Oct. 24, 2014, viewed at <http://www.irs.gov/Business/Small-Businesses-&Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes>

<sup>17</sup> Adam Zoll, “How Grandparents Can Best Help with College Costs.” Morningstar Advisor, September 28, 2012, viewed at <http://www.morningstar.com/advisor/t/63984345/how-grandparents-can-best-help-with-college-costs.htm>

## LEGAL FACT SHEET

Another effective but way of helping a student pay for college is with a 529 plan, so named because they are established under section 529 of the IRS tax code. A 529 Plan is “a plan operated by a state or educational institution, with tax advantages and potentially other incentives to make it easier to save for college and other post-secondary training for a designated beneficiary, such as a child or grandchild.”<sup>18</sup> Anyone can establish a 529 plan and name anyone, including themselves, a beneficiary. The primary benefit of the 529 plan is that because they are considered an asset of the owner, not the beneficiary, they do not count towards the assets available to the applicant (unless the owner is a “parent” and the child is “dependent”).<sup>19</sup> When it comes time to pay qualified educational expenses from the 529 plan, so long as the distribution does not exceed the qualified intended expenses, they are tax-free.<sup>20</sup> However, distributions to the student from a 529 plan owned by someone other than the student or a custodial parent must be reported as other untaxed income on the FAFSA and will be assessed at a rate of up to 50% of the distribution when applying for financial aid the following year.<sup>21</sup>

It may seem like a better option, therefore, to put the 529 Plan in the name of the parent or child. If a 529 Plan is owned by the parent, it will be considered a parental asset in determining the Expected Family Contribution and the parent will be expected to use up to 5.64% of the asset each year on the child’s college.<sup>22</sup> If a 529 plan is owned by the dependent child, it is treated as an asset of the parent and assessed the same 5.64% contribution rate. If a 529 Plan is owned by an independent student, up to 20% of the asset is considered part of the estimated family contribution. But distributions from 529 plans owned by the parent, dependent child, or independent student are not counted towards untaxed income, therefore do not affect the following year’s aid calculation.<sup>23</sup>

A final option for grandparents and other kin is to pay tuition directly to the college on behalf of the student. Direct tuition payments may count as income for the student and would therefore reduce the need-based aid the student receives. Direct tuition payments are exempt from gift tax for the donor. Thus, this option is best when a student will not need financial aid but a grandparent wishes to make a significant contribution.<sup>24</sup>

### Conclusion

The financial aid application process does not adequately account for informal kin caregiving situations; planning ahead to create the necessary legal relationship or to document parental noninvolvement can be key to ensuring need-based financial aid is available to a student. In order to ensure the best possible financial aid options, a kin caregiver should establish a strong relationship with the financial aid office of the school that the child wishes to attend and gather credible evidence from third-parties (e.g. teachers, counselors, pastors or court orders) of parental abandonment. Financial aid administrators do have discretion when determining whether a student qualifies for a dependency exemption or a professional judgment adjustment, so strong advocacy by the kin caregiver on behalf of the student is critical.

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501140150>

<sup>18</sup> IRS, “529 Plans: Questions and Answers,” updated Sept. 23, 2014, viewed at <http://www.irs.gov/uac/529-Plan:-Questions-and-Answers>

<sup>19</sup> Application and Verification Guide 2014-15 at AVG-18

<sup>20</sup> Id.

<sup>21</sup> Onink, Troy, “How Assets Hurt College Aid Eligibility on FAFSA and CSS Profile,” Forbes.com, Feb. 14, 2014, viewed at <http://www.forbes.com/sites/troyonink/2014/02/14/how-assets-hurt-college-aid-eligibility-on-fafsa-and-css-profile/>

<sup>22</sup> Id.

<sup>23</sup> Application and Verification Guide 2014-15 at AVG-18.

<sup>24</sup> Adam Zoll, “How Grandparents Can Best Help with College Costs.” Morningstar Advisor, September 28, 2012, viewed at <http://www.morningstar.com/advisor/t/63984345/how-grandparents-can-best-help-with-college-costs.htm>

## LEGAL FACT SHEET

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