

WHAT IS GOING ON IN WASHINGTON, D.C. ??

2014 PRIVATE SECTOR EDUCATION CONFERENCE

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OUTLINE OF DISCUSSION

1. 2014 Private Sector Higher Education Landscape
2. United States Congress
3. Judiciary: Notable 2013 Awards & Settlements
4. Executive: Federal Regulation and Enforcement
 - a. Department of Education
 - b. Internal Revenue Service
 - c. Department of Veterans Affairs/Department of Defense
 - d. Federal Trade Commission
 - e. Consumer Financial Protection Bureau
 - f. Federal Communications Commission

2014 LANDSCAPE

2014 HIGHER EDUCATION LANDSCAPE

“Let’s make this a year of action.”

“... America does not stand still – and neither will I. So wherever and whenever I can take steps without legislation to expand opportunity for more American families, that’s what I’m going to do.”

- President Obama, 2014 State of the Union Address

“I’ve got a pen to take executive actions where Congress won’t, and I’ve got a telephone to rally folks around the country on this mission.”

- President Obama, January 16, 2014 White House summit of college and university leaders

2014 HIGHER EDUCATION LANDSCAPE

House Republican Reaction:

February 12, 2014 letter to President Obama from Chairman Kline and Chairwoman Foxx:

- January 2014 White House summit on expanding higher education access for low-income students should not have excluded for-profits.
- The President needs to work in cooperation and partnership with the House Education and Workforce Committee hearings leading up to Higher Education Act Reauthorization.
- President's threats to circumvent Congress are an obstacle to reaching bipartisan national higher education policy goals.
- Requested briefing by White House about President's plans to use its Executive authority in the area of higher education policy.

2014 HIGHER EDUCATION LANDSCAPE

Our Crystal Ball for 2014:

What the Obama Administration (and the federal agencies it leads) cannot achieve in higher education policy reform through a divided Congress, we may see attempted through Executive Order, continued and ramped up agency enforcement of current regulations, additional rulemaking, and collaboration with states and non-governmental partners to advance the Administration's policy priorities.

THE ADMINISTRATION'S HIGHER ED PRIORITIES

1. Reduce **student debt** and **college cost**.
2. Protect **access** to college for low income students.
3. Maintain and improve college **value**, including better **alignment with employer needs** and **increased retention/graduation**.
4. Respond to higher education community concerns about **over-regulation**.
5. Informed Consumers/**Disclosures**.

2014 HIGHER EDUCATION LANDSCAPE

What this means for private sector higher education in 2014:

- The well-coordinated campaign led predominantly by Democrats at the federal and state level (White House, federal agencies, Senate, state attorneys general) targeting for-profit colleges will continue with force throughout 2014.
- For-profit institutions will continue to be attractive targets for enforcement at the federal and state level, meaning that the war of attrition that has been ongoing since 2009 will continue.

What this means for you:

- **Good news:** It is unlikely that there will be action in Congress that results in an “existential” blow to the sector as a whole.
- **Bad news:** For-profit colleges will remain high-value targets for regulators.
- **Recommendation:** Schools need to clearly understand their unique regulatory and legal risk profile in order to take the steps necessary to reduce the likelihood of being a target, starting with resolving student complaints early, in order to be able to thrive into the future.

HOW TARGETS ARE BEING IDENTIFIED

- Student and disgruntled former employee complaints to ED, VA/ DOD, CFPB, FTC, other federal agencies, state education agencies, and state attorneys general, plaintiff's attorney "trolling."
- Over 2,000 local, state and federal agencies have access to FTC's Consumer Sentinel Network database that shares information on complaints to effectively target enforcement action against "bad actors."
- This information sharing and collaboration is ongoing and increasing as the technology and number of government agencies participating in Sentinel grows.

DOJ CONSUMER PROTECTION WORKING GROUP

February 2012

The Consumer Protection Working Group will address several areas of concern, including for-profit schools that engage in fraud or misrepresentation.

Members include representatives from:

Department of Treasury, FBI, Internal Revenue Service-Criminal Investigation, Federal Deposit Insurance Corporation, U.S. Secret Service, Financial Crimes Enforcement Network, Executive Office for U.S. Attorneys, **Department of Education's Office of the Inspector General**, U.S. Trustee Program, the National Association of Attorneys General, U.S. Postal Inspection Service, the Office of the Comptroller of the Currency, the Federal Reserve Board and the National Credit Union Administration. The state attorneys general are represented on the working group by Attorney General Lisa Madigan from Illinois, Attorney General Greg Zoeller from Indiana and Attorney General Roy Cooper from North Carolina.

ACTIVITY
IN
113th U.S. CONGRESS

PENDING SENATE BILLS OF NOTE

- S. 114 – “Fairness for Struggling Students Act” - **Would permit private student loans to be treated like other types of private debt in any bankruptcy proceeding.**
- S. 406 – “Students First Act” - **Would require the Department of Education to conduct a program review for all institutions engaging in serial forbearances or default rate manipulation, spending more than 20% of revenue on recruiting or marketing, or deriving more than 85% of revenue from Title IV aid.**

PENDING SENATE BILLS OF NOTE

- S. 528 – “Protecting Financial Aid for Students and Taxpayers Act” - **Would prohibit institutions from using Title IV funds for advertising, marketing or recruiting.**
- S. 1659 – “POST Act of 2013” - **Would change 90/10 rule to 85/15, and include ALL federal funds in the 85% (Tuition Assistance and GI bill funds, except housing allowance).**

PENDING SENATE BILLS OF NOTE

- S. 1803 – “Student Loan Borrowers Bill of Rights” - **Would expand rights of student private loan borrowers and required disclosures.**
- S. 1873 – “Protect Student Borrowers Act” - **Would require institutions to share risk of student defaults by making institutions pay a percentage of the total amount of all loans in default.**

PENDING SENATE BILLS OF NOTE

- S. 1904 – “Higher Education Reform and Opportunity Act of 2013” - **Would expand authorities of states to act as higher education institution accreditors.**
- S. 1969 – “College Affordability and Innovation Act of 2014” - **Would encourage innovation in higher education through grant program promoting reduction in college cost, credit for competency based and prior learning, reduction in time to completion, and other innovations in return for waiver from obligation to comply with certain Title IV regulations.**
- S.2033 - **A bill to amend the Higher Education Act to allow the Secretary of Education to award job training Federal Pell Grants** (introduced 2/12/2014)

PENDING HOUSE BILLS OF NOTE

- H.R. 1928 – “Proprietary Institution of Higher Education Accountability Act” - **Would require for-profit colleges to treat current and former students who have received a specified forbearance or deferment of over six months on Direct Loans before the end of 2nd Fiscal Year after they enter repayment to be included as students who have defaulted in the CDR calculation.**

PENDING HOUSE BILLS OF NOTE

- H.R. 2637 – “Supporting Freedom Through Regulatory Relief Act” - **Would repeal the Gainful Employment, State Authorization and Federal Credit Hour rules and permit certain types of compensation to be paid to third party recruiters under the Incentive Compensation ban.**

The Courts: Notable Settlements

FALSE CLAIMS ACT LITIGATION

- DOJ collected \$3.8 Billion in settlements and judgments under the False Claims Act in 2013 (second largest annual total ever).
- Total recoveries under the FCA during the last five years = \$17 Billion—the largest five-year total ever.
- Several FCA cases pending against for-profit schools, including the significant EDMC case in which DOJ/relator seek \$11 Billion in previously disbursed Title IV funds (which under the FCA statute can be trebled up to \$33 Billion). This case is based on alleged incentive compensation violations occurring under the previous version of the incentive compensation rule.

FALSE CLAIMS ACT/INCENTIVE COMPENSATION

December 2012

The New York Institute of Technology ordered to pay \$2.5 million in a **\$4 million** settlement because the college's business partner, Cardean Learning Group, paid recruiters based on how many students later enrolled in violation of the incentive compensation rule. NYIT had no knowledge of CLG's payments to recruiters. CLG was ordered to pay \$1.5 million. Settlement stemmed from a lawsuit filed by ED OIG and U.S. attorney for the Southern District of New York.

FALSE CLAIMS ACT – 90/10 CALCULATION

May 2013

American Commercial College agreed to pay the U.S. Government up to **\$2.5 million** in settlement of False Claims Act litigation involving allegations that ACC violated the FCA when it orchestrated certain short-term private student loans that ACC repaid with federal Title IV funds to artificially inflate the amount of private funding ACC counted for purposes of the 90/10 Rule. The United States contended ACC orchestrated the loans for the sole purpose of manipulating its 90/10 Rule calculations.

FALSE CLAIMS ACT – PLACEMENT DATA

September 2013

ATI Enterprises Inc. agreed to pay the federal government **\$3.7 million** to resolve allegations that it falsely certified compliance with the federal student aid programs' eligibility requirements and submitted claims for ineligible students by knowingly misrepresenting job placement statistics in order to remain eligible to receive federal student aid funds.

The company first came under scrutiny in Texas when a state agency accused it of submitting inaccurate information about students' job placement rates and ordered it to stop enrolling new students at its 16 campuses in the state.

STATE LAW/DECEPTIVE PRACTICES

June 2013

A jury awarded **\$13 million** to a single mother and former student of Vatterott College based on a consumer fraud lawsuit brought under Missouri state law (the award is on appeal and exceeds the maximum amount permitted under state law).

The individual sued the college alleging its enrollment procedures caused her to spend thousands of dollars and extra time earning a certificate that proved to be useless in the job market. Specifically, she alleged that she enrolled at Vatterott in 2009 with plans to become a nurse. The college did not offer a nursing program, but she alleged she was told by a college representative that she could take their medical assistant's degree program and it would help her become a nurse.

She claimed she secured over \$27,000 in loans and took the program for almost 60 weeks before she was fully informed that she was in fact enrolled in a preliminary medical office assistant's program. Further, she claims that she was told that in order for her to get the medical assistant's degree, she would need to take a total of 90 weeks of instruction and spend at least \$10,000 more.

PREDATORY LENDING/CIVIL RIGHTS ACT

July 2013

Chester Career College settled a class action lawsuit for **\$5 million** that alleged predatory lending practices affecting primarily African American students. Case brought under Virginia consumer protection code and federal Civil Rights Act.

The settlement required the school to reimburse more than 4,000 students and pay attorneys' fees and requires Chester Career College to institute changes that will provide prospective students with "much more transparency" before they enroll. The settlement also provides for continued tracking of students and career placement "to strengthen the school" and its educational mission.

ACCREDITOR LITIGATION

January 2014: Professional Massage Training Center v. ACCSC

- U.S. District Court for the Eastern District of Virginia overturned ACCSC decision to revoke the school's accreditation, finding that decision arbitrary and capricious. In an unusual move, the court fined the accreditation agency for its action. It remains to be seen whether the decision and standard used by the judge could be potentially applied to other accreditors.
- The school sued ACCSC in August 2012, after the agency revoked the school's accreditation, citing concerns about the continuity of its management, the adequacy of its learning resources, and its verification of faculty qualifications. The lawsuit argued that the agency denied the school due process. The court had granted a preliminary injunction in September 2012 blocking the denial of accreditation.

RECENT MULTI-STATE AG INVESTIGATION

January 2014

Four publicly-traded proprietary institutions received letters from a coalition of 13 state attorneys general requesting information on **student-recruitment practices, employment statistics for the colleges' graduates, graduate certification and licensing results,** and **student-lending activities,** including the state attorneys general in Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington. The state AGs indicate the investigation is being undertaken in coordination with the CFPB with respect to the student lending inquiry.

STATE LAW/WHISTLEBLOWER PROTECTION

February 2014

Minnesota state court upheld a \$395,00 (\$205,000 in lost wages and \$190,000 in emotional distress) award in damages to a former dean at Globe University based on allegations that she was fired for complaining that Globe used false job placement statistics and engaged in other misconduct to recruit students. The court also awarded just over \$500,000 in attorney fees, which are provided for under the state whistleblower law.

The court concluded that the former employee was indeed fired in 2011 for raising with management that she believed Globe was providing false information to students about placement rates, starting salaries, and the school's accreditation; failing to provide adequate training for students; and improperly paying commissions to school recruiters.

FEDERAL AGENCIES

DEPARTMENT OF EDUCATION OVERVIEW

1. Recent and Pending Negotiated Rulemakings

- Gainful Employment
- Program Integrity: Distance Education; Cash Management; Etc.
- Violence Against Women Act (VAWA)

2. Current Regulations

- GE Disclosures; 90/10; Cohort Default Rates; State Authorization; Clery Act; HS Diploma/GED; Incentive Compensation; 150% Limit on Subsidized Loans; DOMA/FAFSA; Clock/Credit Hour

3. Top 10 Audit & Program Review Findings

STATUS OF RECENT AND PENDING NEGOTIATED RULEMAKING PROCEEDINGS

GAINFUL EMPLOYMENT

Meetings Held:

Session 1: September 9-11, 2013

Session 2: November 18-20, 2013

Session 3: December 13, 2013 (Added)

Result:

No consensus reached by negotiators.

Status:

Draft rule sent by ED to Office of Management and Budget on 1/30/14

Next Steps:

After OMB review, ED will issue a Notice of Proposed Rulemaking (1Q 2014).
Public comment period will begin, after which Final Rule will be published.

Overview of Draft Gainful Employment Regulation Negotiated Rulemaking Session 3

Metrics	Annual debt-to-earnings Discretionary debt-to-earnings	Program cohort default rate
Students	Completers	Completers & non-completers
Categories & thresholds	Pass: $aDTE \leq 8\%$ OR $dDTE \leq 20\%$ Zone: <ul style="list-style-type: none"> • Not passing AND • $8\% < aDTE \leq 12\%$ OR $20\% < dDTE \leq 30\%$ Fail: $aDTE > 12\%$ AND $dDTE > 30\%$	Pass: $pCDR < 30\%$ Fail: $pCDR \geq 30\%$
Ineligibility rules (metrics operate independently of each other)	A program becomes T4 ineligible for 3yrs if: <ul style="list-style-type: none"> • It fails in any 2 out of 3yrs, OR • Does not pass in any 1 out of 4yrs (time for zone programs to improve before ineligibility) 	A program becomes T4 ineligible for 3yrs if: <ul style="list-style-type: none"> • The 3 year default rate of 3 consecutive cohorts of students is greater than or equal to 30%
Restrictions	<ul style="list-style-type: none"> • Debt warnings to students if program could become ineligible at the end of the year (applies to zone & failing programs) • T4 enrollment limited to previous year's level for failing programs (does not apply to zone programs) 	<ul style="list-style-type: none"> • Debt warnings to students if program could become ineligible at the end of the year • T4 enrollment limited to previous year's level if program could become ineligible at the end of the year

Negotiated Rulemaking Session 3, cont.

<p>Student protections</p>	<ul style="list-style-type: none"> • If program could become ineligible at the end of the year, institution must post letter of credit or agree to set aside portion of T4 funds to provide borrower relief to enrolled students if program eventually becomes ineligible. • During transition period (first four years of rule), if program could become ineligible at the end of the year, institution may provide grants to students to reduce debt instead of letter of credit/excess fund requirement. Programs would not lose eligibility during the transition period if institution chooses this option. 	
<p>Existing program certification</p>	<p>For existing programs, institution must sign certification that program is included in institution's accreditation or, if required, has received programmatic accreditation and completion of program meets requirements to become employed in the occupation for which the program provides training in State within region that program is offered</p>	
<p>New program approval</p>	<p>New programs apply only if the program was deemed ineligible, was a failing or zone program that was voluntarily closed, is in the same "family of CIP" codes as a current or recent failing program. Application requirements:</p> <ul style="list-style-type: none"> • Occupations that program trains for, CIP code, credential level, length of program, cost of tuition, fees, books, supplies, cost of attendance, start date of program • Projected entry level earnings and earnings three years after entering profession as obtained from likely employers • Letters from at least three likely employers signed by an executive officer of the business affirming that program curriculum will prepare student for employment in the relevant occupation • Documentation that institutional accreditation includes program or, if required, that program is accredited • If required, affirmation that program meets licensure, certification, experiential placement, or employer requirements in States within region that program is offered 	
<p>Disclosures</p>	<ul style="list-style-type: none"> • Occupation • Cost of tuition, fees, books, supplies • Program length • Total enrollment • Completion rate (for full and part-time students;) • Withdrawal rate (within normal time of program) 	<ul style="list-style-type: none"> • Placement rate (if required by state or accreditor) • Repayment rate (borrower-based) • Median earnings • Median loan debt • Whether licensure requirements are met (if applicable) • Whether program is accredited (if required)

GAINFUL EMPLOYMENT*

BASED ON 12/11/13 ED DRAFT

Breaking it down:

GE Program: Any Title IV eligible program offered by a for-profit institution and identified by a combination of the institution's six-digit OPE ID number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level. Must have at least 10 completers.

Example: CIP 420101/Psychology, General/03-Bachelors

Completers: The total number of students who have received Title IV aid and who completed the program during the applicable two-year period based on information provided by the institution, not including any excludable student.

2 Year Period: The period covering two consecutive award years that are the third and fourth award years prior to the award year for which DTE rates are calculated (except programs requiring medical or dental internship or residency).

Example: For DTE rates calculated for the award year 2014-15, the applicable two-year period for determining completers is 2010-11 and 2011-12.

GAINFUL EMPLOYMENT*

BASED ON 12/11/13 ED DRAFT

- For **each award year** and for **each GE program**, ED calculates three things:
 - Annual Debt to Earnings (DTE) Rate
 - Discretionary Debt to Earnings (DTE) Rate
 - Program Cohort Default Rate

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Eligibility Metrics –

“Passing”

- Discretionary DTE is less than or equal to 20% **OR**
- Annual DTE is less than or equal to 8%

“Failing”

- Discretionary DTE is greater than 30 percent or the income for the denominator (the GE program’s mean or median or discretionary earnings) is negative or zero; **AND**
- Annual DTE is greater than 12% or denominator is zero.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

“Zone” –

- Not a “passing” program AND
- Discretionary DTE is greater than 20% but less than or equal to 30% OR
- Annual DTE is greater than 8% but less than or equal to 12%

EXAMPLE 1 (CIP 420101:IT/ASSOCIATES) (AS PROVIDED IN ED RAW DATA)

Assumptions: 10 year amortization; 3.37% interest rate

Program Completers: 33

Annual DTE: $1483 \text{ (Annual Loan Payment)} / 48364 \text{ (Annual Earnings)} = 3.06\%$

Discretionary DTE: $1483 \text{ (Annual Loan Payment)} / 31129 \text{ (Discretionary Earnings)} = 4.76\%$

Result: Program PASSES in the Fiscal Year for which rates are calculated because aDTE is less than 8% and dDTE is less than 20% (program would pass based on either DTE rate)

EXAMPLE 2 (CIP 430103:CRIM JUSTICE/BA) (AS PROVIDED IN ED RAW DATA)

Assumptions: 10 year amortization; 3.37% interest rate

Program Completers: 453

Annual DTE: 6375 (Annual Loan Payment)/ 27987 (Annual Earnings) = 22.71%

Discretionary DTE: 6375 (Annual Loan Payment)/ 10752 (Discretionary Earnings)
= 59.12%

Result: Program FAILS for the Fiscal Year for which rates are calculated because aDTE is more than 12% AND dDTE is more than 30% (failing both is required for the program to fail in any year)

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Title IV Program Ineligibility –

- Program fails (both DTE rates) in **two out of any three consecutive award years** for which the rates are calculated; **OR**
- **Does not PASS (either of) the DTE rates in 1 out of any 4 consecutive award years** for which the rates are calculated.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Annual loan payment (Numerator in DTE calculations)

The Secretary calculates the annual loan payment for a GE program by–

- (1) Determining the median loan debt of the students who completed the program during the two-year period, based on the lesser of–
 - (i) The **loan debt** incurred by each student as determined under paragraph (d); and
 - (ii) The total amount of tuition and fees the institution assessed each student for attendance in the program.
- (2) Amortizing the median loan debt over a 10-year repayment period using an annual interest rate that is the lesser of–
 - (i) The annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students who were in repayment in effect on the day the Secretary calculates the D/E rates for the award year; or
 - (ii) The lowest annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students who were in repayment during the six years prior to the end of the two-year period.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Loan debt. In determining the loan debt for a student, the Secretary–

- (1) Includes the amount of title IV loans that the student **borrowed for attendance in the GE program** (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included), **any private education loans that the student borrowed for attendance in the GE program** and that were required to be reported by the institution, and **any credit extended by, or on behalf of, the institution, such as from institutional financing or payment plans**, that the student is obligated to repay after the student’s completion of the program regardless of who holds the debt;
- (2) Attributes all of the loan debt incurred by the student for attendance in any–
 - (i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution; or
 - (ii) Post-baccalaureate GE program at the institution to the highest credentialed graduate degree GE program completed by the student at the institution; and
- (3) **Excludes any loan debt incurred by the student for attendance in programs at other institutions.** However, the Secretary may include loan debt incurred by the student for attending GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

GAINFUL EMPLOYMENT*

BASED ON 12/11/13 ED DRAFT

Exclusions. The Secretary excludes a student from both the numerator and the denominator of the D/E rate calculations if the Secretary determines that–

- (1) One or more of the student's title IV loans were in a military-related deferment status for at least 60 consecutive days during the calendar year for which the Secretary obtains earnings information under paragraph (c);
- (2) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, and 685.212;
- (3) The student was enrolled on at least a half-time basis for at least 60 consecutive days in an eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (c);
- (4) The student completed a higher credentialed GE program at the institution subsequent to completing the program; or
- (5) The student died.

GAINFUL EMPLOYMENT* BASED ON 12/11/13 ED DRAFT

Annual earnings. (Used in Denominator of DTE calculation)

- (1) The Secretary obtains from the Social Security Administration (SSA), under §668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the two-year period and who are not excluded under paragraph (e); and
- (2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

GAINFUL EMPLOYMENT*

BASED ON 12/11/13 ED DRAFT

D/E rates not calculated.

The Secretary does not calculate D/E rates for a GE program if–

- (1) Fewer than 10 students completed the program during the two-year period; or
- (2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c).

HYPO – DTE RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

Example: Calculation of 2014-15 DTE rates:

Rule: DTE calculations will be made using most current available yearly earnings and annual loan payments of students who completed program 3 and 4 years prior to the year for which the calculation is made (the “2YP Cohort”).

Example: DTE rates for the 2014-15 award year would be calculated using the 2014 earnings and annual loan repayment of students who completed a particular program in award years 2010-11 and 2011-12.

HYPO – TRANSITIONAL DTE RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

- In the first four years that DTE rates are calculated under the rule (award years 2014-15 to 2017-18), if a program would be failing or in the zone based on the typical approach to calculating DTE rates, the Secretary will calculate transitional DTE rates using the most currently available annual earnings for the 2YP cohort and the median loan debt of students who completed the program in the most recently completed award year (ie, earnings and debt are decoupled). Transitional rates will be used to assess the program if they are lower than what the rates would be under the normal calculation. This will allow programs that promptly lower tuition and fees to realize the benefits of their changes.
- After the four year transition period, the calculation would revert to a normal approach that uses the outcomes of 2YP cohort for both earnings and annual loan repayment.

HYPO – DTE TRANSITIONAL RATES* BASED ON DRAFT MATERIAL RELEASED BY ED DURING GE NEG REG

Award year for which DTE calculation is made	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Student cohort whose earnings are measured	2010-11 & 2011-12	2011-12 & 2012-13	2012-13 & 2013-14	2013-14 & 2014-15	2014-15 & 2015-16	2015-16 & 2016-17	2016-17 & 2017-18	2017-18 & 2018-19
Earnings used in Calculation	2014	2015	2016	2017	2018	2019	2020	2012
Student cohort whose annual loan payment is calculated	2014-15	2015-16	2016-17	2017-18	2014-15 & 2015-16	2015-16 & 2016-17	2016-17 & 2017-18	2017-18 & 2018-19

HYPO – PROGRAM DEFAULT RATE* BASED ON 12/11/13 DRAFT OF RULE AS RELEASED BY ED

pCDR cohort year:

For each Fiscal Year, ED will determine the pCDR of a GE program using the same methodology the Secretary uses to calculate the institutional CDR under subpart N of Part 668, 34 CFR. That is, the denominator is the number of students who entered repayment on any FFEL or Direct Loan (or the portion of any consolidated loan used to pay those loans) taken to pay for GE program attendance. The numerator is the number of students in the denominator who defaulted on those loans anytime during the pCDR Monitoring Period.

Example: For FY 2013, pCDR cohort includes borrowers who enter repayment between Oct. 1, 2012 and Sept. 30, 2013.

pCDR Monitoring Period: End of second FY following the pCDR Cohort Year.

Example: Those who defaulted anytime between Oct. 1, 2012 and Sept. 30, 2015.

Sanctions: A program becomes T4 ineligible if it fails the pCDR measure for three consecutive fiscal years for which the pCDR is calculated by having a pCDR of greater than or equal to 30% each of those fiscal years.

PROGRAM CDR TIMELINE* BASED ON DISCUSSION MATERIAL RELEASED BY ED DURING GE NEG REG

pCDR Cohort Year	End of pCDR Monitoring Period	Draft pCDR	Official pCDR	Possible pCDR Failing Program	Possible pCDR Ineligible Program
FY 2013	Sept 2015	Feb 2016	Sept 2016	Yes	No
FY 2014	Sept 2016	Feb 2017	Sept 2017	Yes	No
FY 2015	Sept 2017	Feb 2018	Sept 2018	Yes	Yes

ONGOING NEG REG - VAWA

Addressing new regulations required due to changes to the campus safety and security reporting requirements in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (Clery Act), made by the Violence Against Women Reauthorization Act of 2013 (VAWA).

Concerns: Domestic Violence, Dating Violence, and Stalking; Procedures for Reporting, Investigating, and Handling Reports of Such Incidents.

ONGOING NEG REG - VAWA

Meetings:

Session 1: January 13 – 14, 2014 (COMPLETE)

Session 2: February 24 – 25, 2014

Session 3: March 31 – April 1, 2014

Negotiators for private, for-profit institutions:

Deana Echols, Vice President of Compliance, Ultimate Medical Academy

Christine Gordon, American Association of Cosmetology Schools President and Owner, Graham Webb Academy

VAWA

Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. Law 113-4) amended the Clery Act to add several new terms not currently defined in regulation.

Beginning with the Annual Security Report that must be distributed and made available to students, employees, prospective students, and prospective employees by October 1, 2014, each institution must include statistics on the number of incidents of **domestic violence**, **dating violence**, and **stalking** that were reported to campus security authorities or local police agencies. Institutions must also report these statistics to the U. S. Department of Education (Department) each fall. Section 485(f)(6)(A) specifies that, for the purposes of the Clery Act, these terms have the same meaning as in section 40002(a) of the Violence Against Women Act of 1994.

VAWA

Section 40002(a) defines “domestic violence” as a “felony or misdemeanor crime of violence committed—

by a current or former spouse of the victim,

by a person with whom the victim shares a child in common,

by a person who is cohabitating with or has cohabitated with the victim as a spouse,

by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA], or

by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

VAWA

Section 40002(a) defines “dating violence” to mean “violence committed by a person—

who is or has been in a social relationship of a romantic or intimate nature with the victim; and

where the existence of such a relationship shall be determined based on a consideration of the following factors:

- the length of the relationship;
- the type of relationship; and
- the frequency of interaction between the persons involved in the relationship.

VAWA

Section 40002(a) defines “stalking” to mean “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.”

PROGRAM INTEGRITY NEG REG

Tentative Announced Topics include (11/20/2013 Federal Register Notice):

- Cash management of Title IV funds (including fraud prevention and use of debit cards and other banking mechanisms for disbursing Title IV funds).
- Clock to credit conversions.
- The definition of “adverse credit” for borrowers in the PLUS Loan Program.
- State authorization for distance education and correspondence programs.
- State authorization for foreign locations of institutions located in a State.
- The application of the repeat coursework provisions to graduate and undergraduate programs.

* Negotiations begin 2/19/14 but as of 2/17/19 (am) no further information on agenda had been released by ED.

PROGRAM INTEGRITY NEG REG

Meetings:

Session 1: February 19-21, 2014

Session 2: March 26-28, 2014

Session 3: April 23-25, 2014

Sector Negotiators:

Private, for-profit institutions	Deborah Bushway Chief Academic Officer and Vice President of Academic Innovation Capella University	Valerie Mendelsohn Vice President Compliance and Risk Management American Career College
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CLOCK-TO-CREDIT HOUR: ED ISSUE PAPER 2/19

Should we clarify and simplify the clock to credit hour conversion regulations?

Since the publication of the 2010 Program Integrity regulations, the Department has received many questions and comments regarding the clock to credit hour conversion rule. Historically, the main goal of this rule was to ensure that, when institutions with programs that have traditionally measured their academic instruction and progress in clock hours convert those measurements to credit hours, they do not increase the amount of Federal Title IV aid students would qualify for while attending those programs. Section 668.8(l) prescribes the formula that institutions must use to convert affected programs from clock hours to credit hours for the purpose of awarding Title IV funding to students.

The 2010 Program Integrity regulations expanded on that goal in several ways, the first of which was to require that certain programs that have converted to credit hours (in accordance with our conversion formula) nevertheless continue to be treated as clock hour programs for Title IV purposes because of State or Federal approval or licensure rules.

Section 668.8(k)(2)(i) requires that a program measure progress in clock hours for Title IV purposes if State or Federal laws premise program approval or licensure or the authorization to practice the occupation that the student is intending to pursue on measuring the student's progress in clock hours.

CLOCK-TO-CREDIT HOUR: ED ISSUE PAPER 2/19

Prohibition on conversion based on attendance requirements

The 2010 Program Integrity regulations also expanded on the goal of the clock to credit hour conversion rule by tying attendance requirements to the issue of whether a program should be a clock hour program. Section 668.8(k)(2)(iii) requires a program to be a clock hour program if the institution does not offer all the underlying clock hours for a converted program or if the institution “requires attendance in the clock hours that are the basis for the credit hours.” Since implementation of the Program Integrity regulations, this part of the regulations has created a fair amount of confusion and many program participants have questioned the need for it.

CLOCK-TO-CREDIT HOUR: ED ISSUE PAPER 2/19

Compliance with the definition of a credit hour

The 2010 Program Integrity regulations (in §668.8(k)(2)(ii)) also require that a program that has been converted from clock hours to credit hours nevertheless be considered to be a clock hour program if the resulting credit hours are not in compliance with the definition of a credit hour in 34 CFR 600.2. And, with respect to the conversion formula, §668.8(l)(2) of those regulations specifies that the institution can use a slightly lesser number of hours of instruction in its conversion formula (than would normally be required) under certain circumstances if the institution's accrediting agency or State agency has not identified any deficiencies with the institution's procedures for determination of credit hours. The regulation specifies that, for this purpose, the definition of a credit hour in 34 CFR 600.2 is to be used.

QUESTIONS TO ANSWER IN NEG REG

Interface with State and Federal requirements

- Should we modify or delete §668.8(k)(2)(i), which requires that a program measure progress in clock hours for Title IV purposes if clock hours are required for State or Federal approval or if completion of clock hours is required to practice the occupation that the student is intending to pursue? (If so, should §668.8 (k)(3) also be modified or deleted as a conforming change?)
- Is use of clock hours for licensing or other governmental approvals or authorizations relevant to determining whether a program may be offered in credit hours for Title IV purposes?

QUESTIONS TO ANSWER IN NEG REG

Prohibitions on conversion based on attendance requirements

- Should we delete the requirements in §668.8(k)(2)(iii) for a program to be treated as a clock hour program, notwithstanding that it has converted to a credit hour program, based on an institutional requirement that students attend certain hours of the program? Should the balance of §668.8(k)(2)(iii) be deleted as well, since it is redundant of the requirements of §668.8(l)?
- Should we put the institution and its accrediting agency generally in charge of determining whether a program is measured in clock or credit hours – as long as clock to credit conversions are numerically correct and that the results are used appropriately in the awarding of Title IV aid to students, i.e., as long as the institution complies with our formula in §668.8(l) for converting clock hours to credit hours?

QUESTIONS TO ANSWER IN NEG REG

Compliance with the definition of a credit hour

- Should we delete §668.8(k)(2)(ii)? That is, since we established the formula that institutions must use when they convert a program from clock hours to credit hours (i.e., we specify the maximum number of credit hours that the program can have based on the number of clock hours the institution provides) and, since the definition of a credit hour in 34 CFR 600.2 references our formula when there is a conversion, should we continue to consider a converted program to nevertheless be a clock hour program on the ground that the credit hours in the program are not in compliance with the credit hour definition in 34 CFR 600.2?
- Given our clock hour to credit hour formula and our incorporation of that formula into the definition of a credit hour in 34 CFR 600.2, do we need to continue to reference an accrediting agency's or State agency's findings with respect to possible deficiencies in an institution's determination of the number of credit hours in its converted programs in those instances where an institution uses §668.8(l)(2) to convert clock hours to credit hours?

STATE AUTHORIZATION – DISTANCE ED

The regulations under §600.9(c) provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. Furthermore, under §600.9(c), an institution was required to be able to document to the Secretary the State's approval upon request.

On July 12, 2011, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia vacated §600.9(c) on procedural grounds. On August 14, 2012, on appeal, the D.C. Circuit ruled that §600.9(c) was not a logical outgrowth of the Department's proposed rules published at 75 FR 34806 et seq. (June 18, 2010) and directed that the matter be remanded to the Department for reconsideration consistent with the Court's opinion.

STATE AUTHORIZATION – DISTANCE ED

Comments and Questions:

- How should the Department address the statutory requirement of legal authorization by a State in the context of distance and correspondence education?
- What should trigger any requirements for demonstration of State authorization by distance and correspondence education providers?
- Should regulations regarding required approvals for institutions providing distance education and correspondence education based upon an institution's operating authority be comparable to those for institutions with physical presence in a State?
- How should reciprocal agreements be treated under the regulations?
- Should blended courses, internships, and joint degree programs be defined and addressed?

FOREIGN LOCATIONS

Summary of Issue: Determining what regulations should be developed by the Department for State authorization of foreign locations of domestic institutions.

The HEA requires an educational institution to be legally authorized in a State to provide a program of education beyond secondary education in order to participate in the title IV Federal student aid programs, unless an institution meets the definition of a foreign institution. Domestic institutions of higher education often maintain additional locations outside the United States. Neither the HEA nor the State authorization regulations in 34 CFR §§600.4, 600.5, 600.6, or 600.9 specifically address State authorization requirements for foreign locations of domestic institutions.

FOREIGN LOCATIONS

Comments and Questions:

- How should the statutory requirement of legal authorization in a State be applied to foreign locations of domestic institutions?
- Would the proposed regulations apply to the provision of distance education in a foreign location by domestic institutions?
- As part of the State authorization process, would foreign locations of domestic institutions be subject to substantive review by their home State agencies?

UPDATES – KEY REGULATIONS

1. Gainful Employment Disclosure Template;
2. 90/10;
3. Cohort Default Rates;
4. State Authorization;
5. Clery Act;
6. HS Diploma/GED;
7. Incentive Compensation;
8. 150% Rule Direct Subsidized Loans;
9. DOMA/FAFSA; and
10. Clock Hour/Credit Hour

GE DISCLOSURE TEMPLATE

- Electronic Announcement on IFAP posted 11-22-2013
- 34 CFR 668.6(b)(2)(iv): Institutions must use the Disclosure Template issued by the Secretary to provide all of the required GE disclosures.
- Institutions must, no later than January 31, 2014, use the GE Disclosure Template to meet the currently effective GE disclosure regulatory requirements.
- Disclosure template application available at:
<http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html>.

90/10 – NON-TITLE IV REVENUE

34 CFR 668.28(a)(3) – Revenue generated from programs and activities. The institution must consider as revenue only those funds it generates from

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are –

(A) Conducted on campus or at a facility under the institution’s control;

(B) Performed under the supervision of a member of the institution’s faculty; and

(C) Required to be performed by all students in a specific educational program at the institution.

90/10 –NON-TITLE IV REVENUE

34 CFR 668.28(a)(3) – Revenue generated from programs and activities. The institution must consider as revenue only those funds it generates from ...

- (iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under 668.8 if the program –
 - (A) Is approved or licensed by the appropriate State agency;
 - (B) Is accredited by an accrediting agency recognized by the Secretary;
 - (C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;
 - (D) Provides training needed for students to maintain State licensing requirements; OR
 - (E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

90/10 – PRESUMPTION RULE

34 CFR 668.28(a)(4) Application of funds. The institution must presume that any Title IV funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by– (i) Grant funds provided by non-Federal public agencies or private sources independent of the institution; (ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training; (iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or (iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

90/10 – NON-TITLE IV – RECOURSE LOANS

- Cash revenue from institutional loans is recognized only when those loans are repaid, because that is when there is an inflow of cash from an outside source.
- Loan proceeds from institutional loans that were disbursed to students may not be counted in the denominator of the fraction, because these proceeds neither generate nor represent actual inflows of cash. The school may include only loan repayments it received during the appropriate fiscal year for previously disbursed institutional loans.
- The proceeds from recourse loans may be included in the denominator of an institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution's reported revenues are also reduced by the amount of recourse loan payments made to recourse loan holders during that fiscal year.
- Note that recourse loan payments may be for recourse loans that were made in a prior fiscal year. Under the cash basis of accounting, the reductions to total revenues in the denominator of the 90/10 calculation are reported in the fiscal year when the payments are made.

90/10 – NON-TITLE IV – NON-RECOURSE LOANS

- The nonrecourse portion of a partial recourse loan may be included in a 90/10 calculation. In order to include a partial recourse loan in a 90/10 calculation, the contract must identify the percentage of the sale that is nonrecourse; only that percentage may be included. No after-the-fact adjustments may be provided for.
- Revenue generated from the sale of nonrecourse institutional loans to an unrelated third party may be counted as revenue in the denominator of the 90/10 calculation to the extent that the revenues represent actual proceeds from the sale.
- The sale of institutional loan receivables is distinguishable from the sale of a school's other assets because receivables from institutional loans are produced by transactions that generate tuition revenue.
- Tuition revenue represents income from the major service provided by a school. That would not be true in the case of the sale of other school assets.

COHORT DEFAULT RATES

FY 2011 3-Year Rates released 2/18/2014

This year only 3-year rates will be published and schools will be subject to loss of eligibility since three 3-year rates have been calculated (FY 2009 published in 2012, FY 2010 published in 2013, and FY 2011 published in 2014). Schools are subject to loss of eligibility if they have a CDR greater than 30% for 3 years or if they have a 2011 3-Year CDR greater than 40% for one year.

The time period for challenging a school's FY 2011 3-Year Draft Cohort Default Rate under 34 C.F.R Part 668, Subpart N begins on Wednesday, February 26, 2014 for all schools.

3-Year Cohort Default Rate **SANCTIONS**

Effective with the Release of the FY 2011 3-year Cohort Default Rates

School	Sanctions
A school's three most recent official cohort default rates are 30.0 percent or greater for the three year calculation.	Except in the event of a successful adjustment or appeal, a school will lose Direct Loan and Federal Pell Grant program eligibility for the remainder of the fiscal year in which the school is notified of its sanction and for the following two fiscal years.
A school's current official cohort default rate is greater than 40.0 percent or greater, for the three year CDR calculation.	Except in the event of a successful adjustment or appeal, a school will lose Direct Loan program eligibility for the remainder of the fiscal year in which the school is notified of its sanction and for the following two fiscal years.

3-Year Cohort Default Rate – Corrective Actions

Effective with the Release if the FY 2011 3-year Cohort Default Rates

- **First** year at 30% or more
 - Default prevention plan and task force
 - Submit plan to FSA for review
- **Second** consecutive year at 30% or more
 - Review/revise default prevention plan
 - Submit revised plan to FSA
 - FSA may require additional steps to promote student loan repayment
- **Third** consecutive year at 30% or more
 - Loss of eligibility: Pell, DL
 - School has appeal rights

Challenges, Adjustments, and Appeals

Challenges

- Incorrect Data Challenge (IDC)
- Participation Rate Index Challenge (PRI)

Adjustments

- Uncorrected Data Adjustment (UDA)
- New Data Adjustment (NDA)

Appeals

- Loan Servicing Appeal (LS)
- Erroneous Data Appeal (ER)
- **Economically Disadvantaged Appeal (EDA)**
- Participation Rate Index Appeal (PRI)

STATE AUTHORIZATION

Deadline for compliance: July 1, 2014 (78 Fed Reg 29652 - 3/21/2013)

- The Department is providing this further extension to qualifying institutions because several States have notified us that they need additional time to develop or complete processes in order for some institutions to be able to comply with the State authorization provisions in § 600.9(a) and (b).
- In order for an institution that cannot demonstrate it meets the State authorization requirements under the Department's regulations to receive an extension until July 1, 2014, to implement § 600.9(a) and (b), the institution must obtain from the State an explanation of how an additional one year extension will permit the State to modify its procedures to comply with amended § 600.9. This explanation must be provided to Department staff upon request.

STATE AUTHORIZATION

Remaining gray areas:

- State agencies licensing both secondary & postsecondary institutions
- Needed clarity with regard to foreign locations of institutions authorized in their home state
- State law evolution regarding distance education

Expect close review during re-certification process.

CLERY ACT

Clery Act requires all schools to:

- Collect, classify, and count crime reports and crime statistics.
- Issue Timely Warnings and Emergency Notifications.
- Publish an annual security report with both statistics and policy statements.
- Submit crime statistics to ED.

CLERY ACT

Institutions with campus police or security departments must:

- Maintain a daily crime log.

Institutions with on-campus student housing facilities must:

- Disclose missing student notification procedures that pertain to students residing in those facilities.
- Comply with fire safety requirements.

CLERY ACT – COMMON MISTAKES

- 1. Failure to Properly Report Crimes Based on Geography**
- 2. Improper Classification and Under-Reporting of Crimes**
- 3. Lack of or Inadequate Policy Statements**
- 4. Failure to Publish and Distribute the ASR as a Comprehensive Document**
- 5. Inadequate Systems for Collecting Statistics from Required Sources**

CLERY ACT – COMMON MISTAKES

6. **Incorrect Reporting of Referrals for Disciplinary Action for Liquor Law and Drug Violations**
7. **Inaccurate Reporting of Crime Statistics to the Office of Postsecondary Education (OPE)**
8. **Deficient Crime Log**
9. **Inaccurate Reporting of Hate Crimes**
10. **Failure to Develop, Implement, and Adhere to Established Policy**

HIGH SCHOOL DIPLOMA/GED

1/24/2014 Q&A guidance on IFAP:

- ED relies on a State's determination as to what constitutes a high school diploma including whether a certificate of high school completion is equivalent to a high school diploma in that State. Therefore, institutions should check with the State in which the certificate of high school completion was awarded to see if that State considers the certificate of high school completion to be a high school diploma or its equivalent.
- In determining whether a student's high school diploma is valid, ED suggests that institutions check with the appropriate state agency in the State in which the high school is located to determine if a diploma issued from that school is recognized by that State as a high school diploma.

HIGH SCHOOL DIPLOMA/GED

1/24/2014 Q&A guidance on IFAP:

- An institution may provide Title IV aid to a student who completes his or her high school requirements early, but the high school does not formally issue the high school diploma until a later time (e.g., at the end of the school year), only if the institution obtains a signed statement from an official of the high school or school district indicating that the student has completed all of the required coursework and has successfully passed any required proficiency examinations for the high school diploma. The statement must include the date when the actual high school diploma will be issued.

HIGH SCHOOL DIPLOMA/GED

1/24/2014 Q&A guidance on IFAP:

- When an institution relies on a student's self-certification on the FAFSA that he or she obtained a high school diploma, but later determines that the student did not obtain the diploma, the institution will be liable for returning all Title IV aid disbursed to the student if the institution knew or should have known that the student did not have a high school diploma.
- This could happen, for example, if contrary to what the student provided on the FAFSA, the institution's admissions office has a high school transcript that does not show that the student both completed high school and was awarded a high school diploma.

HIGH SCHOOL DIPLOMA/GED

1/24/2014 Q&A guidance on IFAP:

- Applicants who completed secondary education in a foreign country and who are unable to obtain a copy of their high school diploma or transcript may document their high school completion status by obtaining a copy of a “secondary school leaving certificate” (or other similar document) through the appropriate central government agency (e.g., a Ministry of Education) of the country where the secondary education was completed.

INCENTIVE COMPENSATION

- Avoid Admissions/Financial Aid Representation performance evaluation criteria that is numbers based (i.e., numerical quotas for AR activities such as calls placed, admissions interviews held, etc.).
- Performance criteria or profit sharing eligibility based on campus meeting accreditor graduation/employment minimums: use caution in how documented.
- Terminating FA/Admissions employee for failure to perform: use caution in how documented.
- Collecting prospective student contact information at off-campus event raffle for gift: do not require winner(s) to come to the campus to receive such item.

150% LIMIT – DIRECT SUBSIDIZED LOANS

- On January 17, 2014, the Department published Final Regulations modifying the rules regarding the 150% Subsidized Loan Limit for Direct Loans, available at <http://www.ifap.ed.gov//fregisters/attachments/FR011714.pdf>
- The regulations are effective on **March 18, 2014**.
- The regulations follow up an Interim Final Rule published on May 16, 2013 that were effective immediately and added a new provision to the Direct Loan statutory requirements that limits a first-time borrower's eligibility for Direct Subsidized Loans to a period not to exceed 150 percent of the length of the borrower's educational program ("the 150% limit").
- Monitor ED Q&A on IFAP website for technical clarifications.

150% LIMIT – DIRECT SUBSIDIZED LOANS

Final Rule:

- Modifies the rule for rounding borrowers' subsidized usage periods to ensure that similarly situated borrowers have similar subsidized usage periods;
- Modifies the calculation of the subsidized usage period for borrowers who are enrolled on a part-time basis for a period of less than a full academic year, but who receive a Direct Subsidized Loan in the amount of the full annual loan limit;
- Modify the calculation of the maximum eligibility period for two-year baccalaureate degree programs that require an associate degree or at least two years of postsecondary coursework as a prerequisite for admission; and
- Modify the calculation of the maximum eligibility period for certain associate degree programs that have special admissions requirements.

DOMA/FAFSA

December 13, 2013 Dear Colleague Letter GEN-13-25, available at <http://ifap.ed.gov/dpcletters/GEN1325.html>

- Provides guidance on the impact of the Supreme Court's recent decision on same-sex marriages, *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), on the Free Application for Federal Student Aid (FAFSA).
- Until the court ruling, the Department had interpreted all provisions of Title IV of the HEA affecting FAFSA consistent with Section 3 of the Defense of Marriage Act (DOMA), which had prohibited all federal agencies from recognizing same-sex marriages for purposes of federal programs, including the student financial assistance programs authorized under Title IV of the HEA
- Upon review of the *Windsor* decision, the Department has provided information concerning the application of *Windsor* to the Title IV HEA programs.

DOMA/FAFSA – NEW RULE

- For purposes of the Title IV HEA programs, a student or a parent is considered married if the student or parent was legally married in any domestic or foreign jurisdiction that recognizes the relationship as a valid marriage, regardless of where the couple resides.
- The Department is applying a “**place of celebration**” rule and, accordingly, has determined that any legal marriage that is recognized by the jurisdiction in which the marriage was celebrated will be recognized for Title IV HEA program purposes without regard to whether the marriage is between persons of the same sex or opposite sex, and without regard to where the couple resides.
- This determination applies to both a student and to the parents of a dependent student. It also applies to a student attending an institution located in a jurisdiction that recognizes same-sex marriage and in a jurisdiction (e.g., a state) that does not recognize same-sex marriage. Further, this determination applies only to marriages and does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.

CLOCK HOUR PROGRAM AND GE

A Gainful Employment program must be considered clock-hour for FSA purposes if:

- there is a requirement to measure student progress in clock hours when 1) receiving federal or state approval or licensure to offer the program or 2) completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;
- the credit hours awarded for the program are not in compliance with the federal definition of a credit hour; or
- the school does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except for allowable excused absences [34 CFR 668.4(e)], requires attendance in the clock hours that are the basis for the credit hours awarded.

However, these requirements do not apply to a program if there is a state or federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.

Top 10 Audit & Program Review Findings

Top Audit Findings

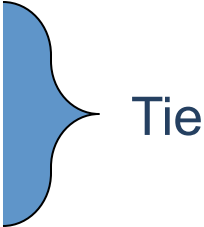


1. Repeat Finding – Failure to Take Corrective Action
2. Return of Title IV (R2T4) Funds Made Late
3. R2T4 Calculation Errors
4. Student Status – Inaccurate/Untimely Reporting
5. Verification Violations


Top Audit Findings

6. Qualified Auditor's Opinion Cited in Audit
7. Pell Overpayment/Underpayment
8. Entrance/Exit Counseling Deficiencies
9. Student Credit Balance Deficiencies
10. Information in Student Files Missing/Inconsistent

Top Program Review Findings

1. Verification Violations
 2. Student Credit Balance Deficiencies
 3. R2T4 Calculation Errors
 4. Crime Awareness Requirements Not Met
 5. Satisfactory Academic Progress Policy Not Adequately Developed/Monitored
 6. Lack of Administrative Capability
 6. Information in Student Files Missing/Inconsistent
- 
- Tie

Top Program Review Findings

- 7. Inaccurate Recordkeeping
 - 7. Pell Grant Overpayments/Underpayments
 - 8. Account Records Inadequate/Not Reconciled
 - 9. R2T4 Funds Made Late
 - 10. Entrance/Exit Counseling Deficiencies
-  Tie

Findings on Both Lists

- R2T4 Funds Made Late
- R2T4 Calculation Errors
- Verification Violations
- Pell Grant Overpayment/Underpayment
- Entrance/Exit Counseling Deficiencies
- Student Credit Balance Deficiencies
- Information in Student Files Missing/Inconsistent



**OTHER FEDERAL AGENCIES –
REGULATIONS AND ACTIONS IMPACTING FOR-PROFIT
COLLEGES**

INTERNAL REVENUE SERVICE - ADJUNCTS

Available at: http://www.ofr.gov/OFRUpload/OFRData/2014-03082_PI.pdf

February 2014

New regulation issued providing additional guidance to college and university administrators about application of the Affordable Care Act (“Act”) to adjunct faculty and student workers and responsibility of certain employers to provide affordable, minimum value health coverage to full-time employees. Initial January 2013 guidance advised college officials to use “reasonable” methods of determining adjunct faculty hours. However, determining an appropriate definition of “reasonable” has been confusing for college administrators attempting to measure the hours worked both inside and outside the classroom.

INTERNAL REVENUE SERVICE - ADJUNCTS

The new regulations offer a more predictable method of valuation of adjunct faculty hours worked:

- Under the regulations, college administrators may credit adjunct faculty members with 2 ¼ hours of work per week for each hour of teaching or classroom time (1 ¼ hours in addition to each hour of classroom instruction). This credits adjunct faculty members for time spent on related tasks outside of the classroom, such as class preparation and grading of coursework. Separately, the regulations credit adjunct faculty with “an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).”
- The above method is only one means of calculating hours of service and is not the only method that may be utilized; college administrators may seek other reasonable alternatives. However, in the absence of any additional guidance that modifies the methods described above, these methods may be relied upon until the end of 2015.

INTERNAL REVENUE SERVICE – STUDENT EMPLOYEES

The regulations also address hours of service for student employees.

- Hours of service for purposes of the shared responsibility provision “do not include hours of service performed by students in positions subsidized through the federal work study program or a substantially similar program of a State or political subdivision thereof.” All hours worked in which a student employee is entitled to payment (other than through a work study program) are required to be counted as hours of service.
- Adjunct faculty members and student workers should be informed of any changes to the methods of calculating hours of service and how such changes may impact the availability of health coverage. While the employer shared responsibility provisions of the Act are not effective until January 1, 2015, employers are encouraged to observe the requirements of the Act and its accompanying regulations as soon as possible in order to facilitate a smoother transition to full compliance in 2015.

DEPARTMENT OF VETERANS AFFAIRS/ NEW COST COMPARISON TOOL

New GI Bill College Comparison Tool – available at <http://www.benefits.va.gov/gibill/>

- Compares college graduation rates, median borrowing levels, loan default rates, price and other information for the 10,000 plus postsecondary school approved to accept VA education benefits.
- Will be expanded to include veterans-specific data when schools have collected and reported that information.
- Furthers the Administration's goal of increased transparency about college cost and protection of veterans.

VA/DOD – NEW COMPLAINT SYSTEM

Recruiting/Marketing Practices

Accreditation

Financial Issues (e.g. Tuition/Fee charges)

Student Loans

Post-Graduation Job Opportunities

Change in Degree Plan/
Requirements

Quality of Education

Grade Policy

Release of transcripts

Transfer of Credits

Refund Issues

Other

VA/DOD – NEW COMPLAINT SYSTEM

<http://www.benefits.va.gov/GIBILL/Feedback.asp>

VA Reviews complaint and forwards to school/employer for their review and response to complaint. If VA/DOD determines another government agency would be better able to assist, agency will forward complaint to them and provide complainant with an update. **Complaints submitted anonymously will not be sent to the school/employer to prepare a response but will be submitted for the record to the Federal Trade Commission's Consumer Sentinel Network.**

School/Employer is expected to review complaint, communicate with agency as needed and prepare a written response to the complaint.

Complainant will receive a copy of the school's/employer's response and the complainant will be asked to inform agency whether the response is satisfactory.

VA/DOD will review and investigate and the complaint data is shared with other state and federal law enforcement agencies as necessary.

FEDERAL TRADE COMMISSION

In **October 2013**, the FTC issued guidance warning military service members about enrolling in for-profit colleges and encouraging the filing of complaints, available at <http://www.consumer.ftc.gov/articles/0395-choosing-college>

In **November 2013**, the FTC by unanimous vote adopted changes to its **Guide for Private Vocational and Distance Education Schools** to make more specific the types of representations enforceable under the FTC Act. According to the FTC, conduct inconsistent with the Guide may result in corrective action by the FTC.

FEDERAL TRADE COMMISSION

The FTC's Guide for Private Vocational and Distance Education Schools (first created in 1972) already advised against deceptive practices by businesses regarding the following topics:

- Accreditation
- Transferability of credit to other schools
- Affiliation with government or employment agencies
- Testimonials and endorsements

FEDERAL TRADE COMMISSION

In November 2013, the FTC voted to amend its Guide to more specifically warn against the following types of misrepresentations:

- Statements made during the recruitment process, including regarding completion/drop out rates and post-graduation job prospects;
- Whether completion of a program will qualify students to take a licensing exam;
- About a student's score on an admission's test, how long it takes to complete a course or program, or a student's likelihood of success; and
- Regarding the likelihood of financial aid, help with language barriers or learning disabilities, or how much credit students will receive for courses completed elsewhere.

FEDERAL TRADE COMMISSION

In the 11/18/2013 Final Rule publishing the Guide revisions, at 78 Federal Register 68987, the FTC reminded the public in **Footnote 10** that even though the Guide focuses on vocational and distance education programs under 16 CFR 254, “the Commission has authority to bring law enforcement actions to curb deceptive or unfair practices in this area regardless of whether an institution that is covered under Section 5 of the FTC Act also falls within Section 254.”

Meaning: The FTC believes the content of the Guide is equally applicable to any type of for-profit higher education institution otherwise subject to Section 5 of the FTC Act, not just vocational and distance education institutions.

FEDERAL TRADE COMMISSION

FTC Act Authorizes:

- Additional Rulemaking
- Enforcement of FTC Act
 - Through federal courts to secure cease and desist order, demands for consumer refunds, or damages.
 - Imposition of fines and/or imprisonment for false advertising.
- Investigation Proceedings
 - Civil Investigative Demands (subpoenas)

FEDERAL TRADE COMMISSION

Reading the “tea leaves” –

- The FTC announced an investigation of a large publicly-traded proprietary school in February 2014.
- FTC, unlike ED, specializes in the enforcement of federal marketing and advertising laws.
- Recent attention on, and resources devoted to, the for-profit college sector indicate that the FTC may be an unusually active presence during the current Administration in policing the sector.

CONSUMER FINANCIAL PROTECTION BUREAU

CFPB has jurisdiction, among other areas, over:

- Any covered person who offers or provides to a consumer any **private education loan**, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

CFPB has a **Private Education Loan Ombudsman** who among other duties, receives, reviews, and attempts to resolve informally complaints from borrowers of loans including attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs.

CONSUMER FINANCIAL PROTECTION BUREAU

- In recent public filings, two publicly traded for-profit schools disclosed that the CFPB is planning legal action against the institutions based on their private lending practices.
- Other investigations of for-profit schools by CFPB are ongoing.
- A January 2014 Wall Street Journal article reported the CFPB and up to 32 state attorneys general are “expanding” their probe of for-profit colleges and deceptive student lending practices. Multi-state litigation is a possibility.

CONSUMER FINANCIAL PROTECTION BUREAU

OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

- (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
- (2) **consumers are protected from unfair, deceptive, or abusive* acts and practices and from discrimination;**
- (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
- (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

FEDERAL COMMUNICATIONS COMMISSION

Regulatory amendments to the Telephone Consumer Protection Act of 1991 effective **10/16/2013** impacting telemarketing conducted by for-profit businesses:

REQUIREMENT and SCOPE: “The seller must secure PRIOR EXPRESS WRITTEN CONSENT from the consumer showing that the consumer agrees to receive, from the seller, autodialed or prerecorded telemarketing calls to a wireless number and/or prerecorded calls to a residential line. The prior express written consent requirement applies to autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded calls to residential lines only. See 77 Fed Reg 34233

WHAT IS PROHIBITED WITHOUT PRIOR EXPRESS WRITTEN CONSENT: The initiation, or causing to be initiated, of any telephone call that includes or introduces an advertisement or constitutes telemarketing, using autodialed or prerecorded telemarketing calls to a wireless number and/or prerecorded calls to a residential line. 77 Fed Reg 34246. Telemarketing means “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.” 77 Fed Reg 34249

FEDERAL COMMUNICATIONS COMMISSION

IMPLEMENTATION OF AUTOMATED, INTERACTIVE OPT-OUT REQUIREMENT FOR CONSUMERS: Went into effect on January 14, 2014. See 74 Fed Reg 63240.

The TCPA applies only to calls initiated by telemarketers. Therefore, when the person contacts the school on their own, the school can and will need to take steps to obtain through permissible means the necessary prior express written consent to initiate any future recruitment calls to that person. The school could use a verbal script that is compliant with TCPA and have the caller press a key to obtain the necessary consent while they have him/her on the line.

FEDERAL COMMUNICATIONS COMMISSION

CALL v. TEXT: A text to a phone number is considered the same as a call to that number.

AUTOMATIC TELEPHONE DIALING SYSTEM and AUTODIALER: Means equipment which has the capacity to store and produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

SIGNATURE REQUIREMENT: “Written consent obtained pursuant to the E-SIGN Act, 15 USC 7001 (2000), will satisfy the requirement of the revised rule, including permission obtained via an email, Web site form, text message, telephone key press, or voice recording.” See 77 Fed Reg 34233

TCPA

The exemptions from the TCPA requirement for prior written consent include:

All calls by a tax exempt non-profit organization.

All calls that deliver a health care message made by or on behalf of a “covered entity” or its “business associate” as those terms are defined in HIPPA Privacy Rule, 45 CFR 160.103.

All calls including from debt collectors, universities or colleges, airlines, or any other entity that are for informational purposes only and do not contain telemarketing.

Calls to residential lines for noncommercial purposes.

Calls to residential lines for emergency purposes.

Calls to residential lines for commercial purposes but that does not include or introduce an advertisement and does not constitute telemarketing.

FINAL NOTES – WEATHERING THE STORM

- **Seek to Resolve Student Complaints Early:** even one or two can be a basis for a regulatory investigation.
- **Transparency and Disclosure:** clear information avoids confusion and later consumer problems.
- **Marketing and Advertising:** constantly evaluate how your school communicates to the public.
- **Placements:** Verify and re-verify your data.
- **School/branch/program closures:** Handle to the letter of the law and in accordance with guidance of state, accreditor and ED.

PETER LEYTON

Peter Leyton is co-founder of the Washington, D.C. area law firm of Ritzert & Leyton, P.C. and head of the firm's education practice group. Since 1980, Peter has represented many institutions of higher education, publicly traded companies, private investment groups and others with respect to resolving regulatory/compliance matters as well as with respect to achieving desired transactional results through mergers, acquisitions and reorganizations. This work involves daily interaction with the U.S. Department of Education (DOE), national, regional and programmatic accrediting agencies as well as state licensing agencies and other third parties. Peter completed his second term on the Association of Private Sector Colleges and Universities board of directors in June 2012. Peter received his law degree from Catholic University School of Law in 1980, a master's degree in public administration from American University in 1974, and a bachelor's degree in political science from Antioch College in 1971.

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Ms. Brodie provides counsel to the Firm's domestic and foreign nonprofit, public and proprietary college and university clients, and their investors and business partners, on a wide range of federal and state regulatory compliance and accreditation matters, including providing counsel with regard to the numerous Department of Education regulations to which higher education institutions are accountable as condition of their Title IV (student financial aid) program participation. She is a member of the National Association of College and University Attorneys (NACUA) and a regular speaker at national, regional and state higher education stakeholder meetings.

Prior to joining Ritzert & Leyton, PC, Ms. Brodie served as VP for Government and Legal Affairs at APSCU. In that role, she worked collaboratively with association membership and Board of Directors on priority policy and legal matters. She began her legal career at Akin Gump Strauss Hauer & Feld, LLP in Washington, D.C. where she practiced law as Associate from 1997-2003 and as Counsel from 2003-2009 in the firm's Public Law & Policy Group. She is licensed to practice law in the District of Columbia, Maryland and Virginia (pending).