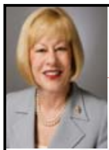

Washington Potpourri: A Whirlwind Tour of Legislative and Department of Education Activities

Presented at the
2017 NASASPS Annual Conference
April 3, 2017

Sharon H. Bob, Ph.D.
Powers Pyles Sutter & Verville, PC
1501 M Street, NW, Seventh Floor Washington, DC 20005
Telephone: (202) 466-6550 Fax: (202) 785-1756 www.ppsv.com

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Trump is President

- On 11/8/2016, Donald Trump won a decisive electoral college victory and, on 1/20/2017, Trump was sworn in as President.
- Republicans retained the Senate majority (52) and the House only lost a handful of seats to retain a solid majority.
- During the campaign, Trump did not spend much time discussing higher education issues. However, on 10/13/2016, Trump devoted part of a speech to higher education and expressed concern about high student debt levels; and

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Trump is President, cont.

- Trump called college debt an “albatross” around people’s necks and endorsed income-based repayment systems where students’ monthly student loan payments would be capped at 12.5% of their income and remaining debt would be forgiven after 15 years.
- During the campaign, Trump called for greater scrutiny of how colleges amass their endowments and asked what they are used for. Why not reduce tuition and lower student costs?
- Trump also spoke about the return of private capital into the federal student loan program.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Trump is President, cont.

- Trump's campaign website stated that a Trump Administration "will make postsecondary options more affordable and accessible through technology enriched delivery models."
- During the campaign, Trump talked about rolling back regulations including state authorization regulations, borrower defense to repayment rules, teacher quality improvement requirements, and the gainful employment regulations.

  Wishful thinking? Not really. How it's done is the question.

Trump is President-Elect, cont.

From Election Day to the Present:

- On 11/23/2016, President-Elect Donald Trump announced his choice of Betsy DeVos as Secretary of Education:
  - Mrs. DeVos was chairwoman of the American Federation for Children, a group that pushes for the expansion of charter schools and voucher programs that provide families with public money to spend on private school tuition; and

Trump is President-Elect, cont.

  - Mrs. DeVos is a former chairwoman of the Michigan Republican Party.
- Mrs. DeVos' selection is a sign that Trump plans to pursue his campaign pledge to push for sweeping school choice.

Confirmation of DeVos as Secretary of Education

- Senator Lamar Alexander (R-TN), Chair of the HELP Committee, said:

  "Betsy DeVos is on our children's side. She has dedicated her life to helping children, especially low-income children, have the opportunity to attend a good school. Most of the criticism of Mrs. DeVos has been focused on three things: Her support for more public charter schools; her advocacy for giving lower-income parents more choices; her use of her considerable wealth to advance effectively those two ideas. I believe Mrs. DeVos is in the mainstream of public opinion on the best way to help children succeed, and her critics are outside of it."

Confirmation of DeVos as Secretary of Education, cont.

- Ranking Member Senator Patty Murray (D-WA) said:

  "I have major concerns with how you have spent your career fighting to privatize public education and gut investments in public schools." Senator Murray also was concerned with Mrs. DeVos' potential conflicts of interest, her reported views on the Office of Civil Rights, and a lack of clarity on DeVos' positions on higher education.

Confirmation of DeVos as Secretary of Education, cont.

- Throughout the hearing, the Republicans applauded Mrs. DeVos' work to expand charter schools and school vouchers, and Democrats criticized her for wanting to privatize public education.
- While the majority of the hearing was focused on Mrs. DeVos' views related to K-12 education, several senators asked her for more detail on her thoughts on higher education policies and issues, such as sexual assault, data transparency, tuition-free public college, regulatory burden, and the complexity of managing the federal student aid system.

Confirmation of DeVos as Secretary of Education, cont.

- In Mrs. DeVos' prepared remarks, she raised the issue of rising amounts of student debt and said: "Escalating tuition is pricing aspiring and talented students out of college. Others are burdened with debts that will take years – even decades – to pay off."
- Several Democrats questioned Mrs. DeVos as to whether she would uphold the Obama Administration's guidance on how colleges should handle allegations of sexual assault. She responded that there were "a lot of conflicting ideas" about how to enforce the rules under Title IX.

Confirmation of DeVos as Secretary of Education, cont.

- Senator John Isakson (R-GA) asked about the congressionally mandated study on the negative effects of regulatory burden and whether she would use her existing authority to roll back any regulations that were administratively burdensome and unnecessary. Mrs. DeVos responded that she was committed to exploring the recommendations of the report and would work with Congress on other pieces that could be changed by legislation.
- Senator Bernie Sanders (D-VT) asked whether she would work with him and others to make public colleges and universities tuition-free and she responded that while it was an interesting idea, "nothing in life is truly free."

Confirmation of DeVos as Secretary of Education, cont.

- Senator Elizabeth Warren (D-MA) asked Mrs. DeVos about her knowledge of the Department of Education's role in high education including the oversight of the federal student loan program and the federal student aid system. Mrs. DeVos responded that she would "be very vigilant" about protecting taxpayer dollars from waste, fraud, and abuse by colleges that receive federal student aid and would "ensure that federal monies are used properly and appropriately."

Confirmation of DeVos as Secretary of Education, cont.

- In response to questions from Ranking Member Patty Murray (D-WA), Mrs. DeVos said: "I think we need to think more innovatively about how we help students finance their postsecondary education."

- On 2/7/2017, three weeks after her hearing, Betsy, DeVos was finally confirmed as Secretary of Education. The 50 to 50 tie was broken by Vice President Mike Pence.

Rolling Back Regulations

- On 1/20/2017, Reince Priebus, Assistant to the President and Chief of Staff, sent a memo to federal agencies to freeze all pending regulations. See: https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies.
- On 2/24/2017, President Donald Trump issued an Executive Order to federal agencies to begin identifying regulations for elimination. See: https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda.

Rolling Back Regulations, cont.

- On 1/31/2017, Trump appointed President of Liberty University, Jerry Falwell, Jr., to lead a presidential task force on reducing college regulations. Mr. Falwell said he sees this as a response to "overreaching" regulation and micro-management in areas of accreditation and policies that affect student recruiting.
  - On 2/23/2017, 6 Senate Democrats asked for answers regarding the task force: "As your agency will be the primary convener of the 'task force,' we ask that you provide clarity about how it will operate and how the Department intends to ensure fairness and transparency at every state of the task force's work." A copy of the letter is found at: https://www.scribd.com/document/340105153/Falwell-Task-Force-Letter-2-23-17.

Rolling Back Regulations, cont.

- On 2/28/2017, Senate Budget Chair Mike Enzi (R-WY) asked the Secretary to conduct audits of all student loan-related data citing inaccurate data about the projected cost of income-repayment plans (2016 GAO Report) and repayment rates included in College Scorecard and Financial Aid Shopping Sheet. See: http://www.budget.senate.gov/imo/media/doc/Letter%20to%20Secretary%20DeVos.pdf.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Rolling Back Regulations, cont.

- On 2/24/2017, OIG released a report, "FSA's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers," which reviewed FSA processes since the closure of Corinthian Colleges, Inc. The Report found FSA had improved its processes to identify at-risk institutions, including the provisions in the borrower defense rules. The OIG report is found at: https://www2.ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Rolling Back Regulations, cont.

- On 3/28/2017, 18 Senate Democrats wrote to Secretary DeVos asking her to implement the recommendations of the recent OIG report. They asked if the Secretary will:
  - Implement the OIG recommendations?
  - Enforce the borrower defense regulations?
  - Will you maintain the Student Aid Enforcement Unit?

  See: https://www.warren.senate.gov/?p=press_release&id=1521.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Rolling Back Programs

- On 3/16/2017, the Trump Administration released its FY 2018 budget request ("the "skinny budget") and proposed:
  - $59 billion for ED - a 13% decrease in education spending;
  - Elimination of SEOG;
  - Removal of the Pell Grant surplus of $4 billion;
  - A decrease in FWS funding and suggests redirecting funds to undergraduates;
  - Effects 2018-2019 award year; and
  - Streamlines and simplifies funding for colleges.
- A number of House and Senate Republicans welcomed the President's budget, but House and Senate Democrats pounced on the scope of the budget cuts.

Reauthorization of the Higher Education Act

While Congress has not begun to work on the *Higher Education Act* reauthorization, there have been efforts to update higher education policies.

- Bills that Passed in the House:
  - H.R. 3178, the *Strengthening Transparency in Higher Education Act*, would ensure that transparency data includes information on more than just first-time students and would repeal the College Navigator, the College Affordability and Transparency Lists, the State HE Spending Chart, and the Multi-Year Tuition Calculator. Directs Secretary to make public a College Dashboard website that aggregates information on enrollment, completion, cost, financial aid, and faculty. [Passed 7/11/2016]

Reauthorization of the Higher Education Act, cont.

- H.R. 3179, the *Empowering Students Through Enhanced Financial Counseling Act,* would expand loan counseling requirements requiring annual entrance counseling. [Passed 7/11/2016]
- H.R. 5528, the *Simplifying the Application for Student Aid Act,* would require ED to use tax information from the second preceding tax year to determine a student's financial aid eligibility. [Passed 7/11/2016]

Reauthorization of the Higher Education Act, cont.

- H.R. 5529, the *Accessing Higher Education Opportunities Act,* would expand grant opportunities under the Hispanic Serving Institutions program. [Passed 7/11/2016]
- H.R. 5530, the *HBCU Capital Financing Improvement Act,* would give the Secretary the authority to provide financial counseling and technical assistance to institutions that apply for capital improvement loans. [Passed 7/11/2016]

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

While the Senate did not consider significant higher education legislation during the 114th Congress, Senator Lamar Alexander (R-TN) released three staff "white papers" and asked for feedback on the issues they discussed related to reauthorization HEA: accreditation; risk-sharing; and the collection of consumer information.

- On 1/7/2015, Senators Alexander and Michael Bennet (D-CO) introduced S. 108, the *Financial Aid Simplification and Transparency Act of 2015,* to simplify the financial aid process by replacing the current FAFSA with two questions to determine student eligibility (i.e., household size and prior year income). The bill would also simplify the loan repayment options.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

- On 1/7/2015, Senators Angus King (I-ME) and Richard Burr (R-NC) introduced S. 85, the *Repay Act of 2015,* which would direct the Secretary to carry out a simplified income-driven repayment program for students who become new borrowers of Direct Loans on or after 7/1/2015.
- Senator Alexander also established four major working groups to prepare for HEA reauthorization:
  - Accountability;
  - Accreditation;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

- College affordability and financial aid; and
- Campus sexual assault.

- Senator Alexander said: "The Higher Education Act we see today – a nearly 1,000 page law with an equal amount of pages devoted to higher education regulations – is simply the piling up of well-intentioned laws and regulations, done without anyone first weeding the garden."

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

- On 3/4/2015, Senator Mike Lee (R-UT) introduced S. 649, *the Higher Education Reform and Opportunity (HERO) Act*, which would allow states to develop their own system of accrediting institutions of higher education.
  - States would also have the authority to accredit apprenticeships, job training, part-time certification programs, and individual courses of study.
  - A companion bill, H.R. 1287, the *Higher Education Reform and Opportunity Act*, was introduced by Congressman Ron DeSantis (R-FL) on 3/4/2015.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

Senate Democrats introduced a number of bills to protect students:

- On 5/15/2015, Senators Jack Reed (D-RI), Dick Durbin (D-IL), Chris Murphy (D-CT), and Elizabeth Warren (D-MA) introduced S. 1102, the *Protect Student Borrowers Act of 2015*, which would require institutions to assume some of the financial risk of student loan defaults. "Skin in the Game."

- On 7/30/2015, Senator Sherrod Brown (D-OH) introduced S. 1908, the *Protecting Financial Aid for Students and Taxpayers Act*, which would ban colleges and universities from using proceeds from federal education assistance funds for advertising, marketing, and recruiting.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Reauthorization of the Higher Education Act, cont.

- On 9/29/2015, Senators Chris Murphy (D-CT), Dick Durbin (D-IL), Elizabeth Warren (D-MA), and Sherrod Brown (D-OH) introduced S. 2098, the *Students Before Profits Act*, which would authorize enhanced civil penalties on institutions and their executive officers if it is determined that the institution misrepresented its cost, admission requirements, completion rates, and uses the penalties to fund a Student Relief Fund to help defrauded students.

Reauthorization of the Higher Education Act, cont.

- On 6/24/2016, Senators Tom Carper (D-DE) and Richard Blumenthal (D-CT) introduced S. 1664, *Military Veterans and Education Protection Act*, which would close loophole on 90/10 by requiring Veterans benefits and Tuition Assistance benefits to be included in the 90 percent of the 90/10.

Reauthorization of the Higher Education Act, cont.

- On 10/7/2015, Congresswoman Maxine Waters (D-CA) introduced H.R. 4054 that would revise the 90/10 rule to include veterans' education benefits and DoD Tuition Assistance as federal funds.
- On 11/19/2015, Congressman Steve Cohen (D-TN) introduced H.R. 4101, the *Protecting Our Students and Taxpayers* (POST) Act, which would modify the 90/10 rule to be 85/15.

Reauthorization of the Higher Education Act, cont.

- On 9/21/2016, Senators Chris Coons (D-DE) and Johnny Isakson (R-GA) introduced S. 3368, the *Access Success and Persistence in Reshaping Education Act* (ASPIRE), which would incentivize colleges to expand access to low-income students and increase graduation rates for all students. ASPIRE encourages selective colleges to boost enrollment of low-income students or pay a fee to participate in Title IV.

Reauthorization of the Higher Education Act, cont.

- On 7/8/2015, Senator Tammy Baldwin (D-WI) introduced S. 1716, *America's College Promise Act* that would reaffirm President Obama's call to make community colleges free. On 11/16/2015, Congressman Bobby Scott (D-VA) introduced the companion bill in the House (H.R. 2962).
- Other bills are being introduced that would provide for the standardization of student award letters, like the Financial Aid Shopping Sheet, that would provide year round Pell Grants, and that would provide alternative repayment plans to simplify the process.

Who Are the Players in the 115th Congress?

- Senator Lamar Alexander (R-TN) will remain as Chairman of the Health, Education, Labor and Pensions Committee and the Ranking Member will remain Patty Murray (D-WA).
- On 12/2/2016, Congresswoman Virginia Foxx (R-NC) became Chair of the House Committee on Education and the Workforce since Congressman John Kline (R-MN) retired at the end of the session. Congresswoman Foxx was the Chair of the Subcommittee on Higher Education and Workforce Training. The Ranking Member is Bobby Scott (D-VA).

Who Are the Players in the 115th Congress?, cont.

- Ms. Foxx said her goal was to work with the Trump Administration to limit federal involvement in higher education, including limiting federal spending, and to "stop the executive branch from writing regulations that take over the role of Congress."
- Ms. Foxx said, "She'd like to reverse a Democratic Congress' decision to have the Education Department, not banks, issue student loans."

Who Are the Players in the 115th Congress?, cont.

  - She wants to reverse ED's rules targeting for-profit colleges.
- On 1/24/2017, Chairman Foxx met with her committee members and outlined her agenda for the 115th Congress:
  - The committee will continue to monitor the costs and performance of the Title IV programs; and
  - The committee will continue its oversight of regulatory policies and challenge those that enlarge the federal footprint in higher education.

Who Are the Players in the 115th Congress?, cont.

- On 2/7/2017, the House Education and Workforce Committee held its first hearing on higher education. Chairman Virginia Foxx (R-NC) identified four principles she plans to focus on:
  - Empowering students and families to make informed decisions;
  - Simplifying and improving student aid;
  - Promoting access, innovation, and completion; and
  - Promoting strong accountability and a limited federal role.

Who Are the Players in the 115th Congress?, cont.

- On 3/21/2017, the House Education and Workforce Training Subcommittee held a hearing to examine proposals to streamline and simplify the federal student aid system. Chairman Brett Guthrie (R-KY) said that the programs have become too complex.
  - Students and families need to navigate
    - 6 different types of student loan programs;
    - 9 different repayment plans.
    - 8 different forgiveness programs; and
    - 32 deferment and forbearance options.
  - Lawmakers and witnesses recommended "one grant/one loan" program.

The Legacy of President Obama

- Obama's 2008 Campaign Platform called for increasing Pell Grant funding, simplifying the FAFSA, and instituting a $4,000 tax credit for college students who performed public service.
- Immediately after taking office, the President faced a financial crisis in 2008, which resulted in the current student debt crisis.
  - Student debt was around $600 million when Obama took office and when he leaves, cumulative student debt will be more than $1.3 trillion.

The Legacy of President Obama, cont.

- In the first State of the Union address, Obama announced that the U.S. should have the highest proportion of graduates by 2020. At that time, the U.S. was in 12th place and now in 10th place.
- In 2010, student loan reform was included in the *Affordable Care Act* and the FFEL Program was eliminated as of 7/1/2010 to save $60 billion over 10 years.

The Legacy of President Obama, cont.

- On 10/29/2010, ED published its program integrity rules to "curtail fraud and abuse" and protect taxpayer investments in higher education:
  - Twelve safe harbors were eliminated from the incentive compensation rule;
  - Clarified what is legally authorized in a State;
  - Defined credit hour;
  - Modified conversion to federal credits formula; and
  - Added definition and requirements for gainful employment programs.

The Legacy of President Obama, cont.

- On 4/27/2012, Obama established the Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members leading to the MOU for DoD and Financial Aid Shopping Sheet.
  - On 11/14/2016, updated 1/13/2017, ED released new version of Financial Aid Shopping Sheet at: https://ifap.ed.gov/eannouncements/111416FinancialAidShoppingSheet20172018.html.

The Legacy of President Obama, cont.

- On 3/10/2015, Obama signed a Presidential Memorandum establishing the Student Aid Bill of Rights to establish a complaint system, help students responsibly repay their loans, and analyze student debt trends.
  - On 10/30/2015, ED finalized rules to provide Revised Pay As You Earn (REPAYE) Plan to allow students to cap their monthly loan payments at 10% of discretionary income and have loans forgiven after 20-25 years.

The Legacy of President Obama, cont.

- On 10/30/2015, ED published additional program integrity rules to ensure students had convenient access to their Title IV funds, do not incur unreasonable and uncommon fees on their Title IV funds, and are not led to believe they must open a particular financial account to have access to their Title IV funds.
- The White House promoted the expansion of tax benefits that would be tied to higher education and under the American Opportunity Tax Credit (AOTC), those who attend college can receive a maximum tax credit of $2,500 per year or up to $10,000 over four years. As a result of the bipartisan budget agreement in 2015, the AOTC was made permanent.

The Legacy of President Obama, cont.

- Obama sought to combat sexual assault on campuses, and the Administration created "It's On Us" campaign to raise awareness of sexual assault. The *Violence Against Women Reauthorization Act of 2013* (VAWA) amended the Clery Act. Final regulations issued on 10/20/2014, effective 7/1/2015, to ensure that institutions address sexual assault incidents on-campus.

The Legacy of President Obama, cont.

- On 8/22/2013, Obama proposes at UB the concept of having the federal government determine which colleges are good and which are not, a College Ratings System. As a result of many concerns about comparing institutions with different missions and different student characteristics, on 9/12/2015, ED released the revised College Scorecard.
  - Discloses:
    - Comparisons between students 6 years after first enrolling and those who entered the workforce with a high school diploma, who made average earnings of $25,000;

The Legacy of President Obama, cont.

- Median Earnings of former students 10 years after entering college based on IRS data (i.e., single number for each institution);
- Average Debt upon graduation;
- Graduation Rates;
- Average Annual Cost;
- Percentage of undergraduate students who borrowed student loans;
- Percentage of first-generation students at a given school;

The Legacy of President Obama, cont.

- Percentage of students who repay at least a dollar of principal on their federal loans within 3 years; and
- Percentage of undergraduate students receiving Pell Grants.
- Students can search data base by name of institution, size, degrees, and programs of study.

The Legacy of President Obama, cont.

- Originally did not include certificate-granting institutions, but now includes over 700 predominantly certificate-granting institutions.

- https://collegescorecard.ed.gov/
- On 9/14/2016, and corrected on 1/13/2017, ED released its updated College Scorecard, the fourth improvement since its original release.

  See: https://ifap.ed.gov/eannouncements/011317UpdatedDataForCollegeScorecardFinaidShopSheet.html

The Legacy of President Obama, cont.

- On 9/14/2015, Obama announced 2 major changes to the FAFSA process:
  - FAFSA would be available on 10/1/2016 for the 2017-2018 award year instead of 1/1/2017; and
  - Beginning with the 2017-2018 FAFSA, FAFSA income information will collect tax year 2015 income rather than 2016.

The Legacy of President Obama, cont.

- Despite multiple court battles, ED published final rules on 10/31/2014, effective 7/1/2015, that apply to programs leading to gainful employment in a recognized occupation:
  - Requires institutions to report information about students who enrolled in each of the institutions' GE programs to enable ED to calculate the program's debt-to-earnings (D/E) rates and other program outcome measures the institutions may be required to disclose;

The Legacy of President Obama, cont.

  - Establishes a D/E measure to determine whether a GE program prepares students for gainful employment based on the median loan debt and earnings of students who previously completed the program. Two D/E rates are calculated: one based on annual earnings and one based on discretionary earnings;

The Legacy of President Obama, cont.

- Debt-to-Earnings (D/E) rates:
  - Annual Earnings Rate = Annual Loan Repayment/Annual Earnings
  - Discretionary Income Rate = Annual Loan Repayment/Discretionary Income

  NOTE: Discretionary Income = Annual Earnings – $11,770 (2016 Poverty Level) X 1.5

  - Passing: Annual D/E < = 8% or Discretionary D/E < = 20%

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Failing: Annual D/E > 12% and Discretionary D/E > 30%
- Zone: Annual D/E > 8% and < = 12% or Discretionary D/E > 20% and < = 30%
- For 2014-2015 award year (1st year):
  - Two-year cohort period: 2010-2011 and 2011-2012
  - Four-Year cohort period: 2008-2009 to 2011-2012

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Program Loses Title IV Eligibility if:
  - D/E Measures - Fails in two out of any three consecutive award years.
  - D/E Measures – Fails or in the zone in four out of any four consecutive award years.
- Requires institutions to disclose to current and prospective students information about GE programs through a disclosure template developed by ED; and

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Requires institutions to establish the eligibility of a GE program by certifying, among other things, that the program is included in the institution's accreditation and satisfies any applicable state licensing and certification requirements.
  - The new program may not be substantially similar to a program offered that in the prior 3 years became ineligible for Title IV, or was failing, or in the zone, and was voluntarily discontinued.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Timeline:
  - On 5/31/2016, ED released Draft GE Completers List Files - Schools had 45 days to challenge list ending on 7/28/2016;
  - By 10/1/2016, institutions reported on 2015-2016 Title IV recipients;
  - On 10/19/2016, ED released Draft GE D/E rates and challenge period was 10/24/2016 to 12/7/2016 (45 days);

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 1/9/2017, ED released the final D/E rates, which will be added to the College Scorecard;

  Earnings Appeal Notice: 1/23/2017.

  Earnings Appeal Submission Due: 3/10/2017.
- By 2/8/2017, institutions must provide warnings for any GE program that is at risk of losing Title IV eligibility based on next D/E rates within 30 days of Notice.
- On 1/19/2017, ED released the 2017 GE Disclosure Template (must be implemented by 4/3/2017).

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 3/6/2017, ED announced that it is allowing additional time, until 7/1/2017, for institutions to submit an alternative earnings appeals to the GE D/E rates and comply with the GE program disclosure requirements. Per the EA, this action will allow ED to further review the GE rules. See: https://ifap.ed.gov/eannouncements/030617GEAnnounce105AddtlSubTimeAEAandGEDisReq.html.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 3/13/2017, Senators Elizabeth Warren (D-MA), Dick Durbin (D-IL), and Sherrod Brown (D-OH) sent a letter to the Secretary asking why there is a delay. Eleven Senators sent another letter expressing their concerns over the delay.

  See: https://www.durbin.senate.gov/imo/media/doc/Senate%20Gainful%20Employment%203.13.17.pdf.

  See: https://www.warren.senate.gov/files/documents/2017_03_3_ED_IG_Letter.pdf.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 11/1/2016, ED published final regulations on borrower defense to repayment with the goal of protecting student borrowers against “misleading predatory practices by postsecondary institutions” and to clarify the process for loan forgiveness in cases of institutional misconduct. The rules go into effect 7/1/2017:
  - Gives borrowers access to clear, consistent, fair, and transparent processes to file claims;
  - Gives and empowers the Secretary to provide debt relief to borrowers without requiring individual applications in cases of widespread misrepresentations;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Safeguards and helps taxpayers by ensuring financially troubled institutions provide the government with protection against the risks they create and holding institutions whose actions lead to discharges of federal student loans responsible;
- Helps students make more informed decisions by requiring proprietary schools with poor loan repayment outcomes to include a plain-language warning in their advertising and promotional materials;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- Makes sure affected borrowers have information about loan discharge when institutions close and have access to an automated process; and
- Bans institutions from inducing students to sign pre-dispute arbitration agreements waiving their rights to go to court and bring class action lawsuits based on borrower defense claims.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 12/19/2016, ED published final regulations that require institutions offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, including through a State authorization reciprocity agreement. The rules go into effect 7/1/2018:
  - The rules require an institution to document the State process for resolving complaints from students enrolled in programs offered through distance education or correspondence;
  - The rules require that an institution provide public and individualized disclosures to enrolled and prospective students regarding the programs offered 100% through distance education or correspondence courses.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The Legacy of President Obama, cont.

- On 2/8/2016, ED created a Student Aid Enforcement Unit to respond more quickly to allegations of illegal actions by institutions of higher education, headed by Robert Kaye, formerly the FTC's Bureau of Consumer Protection's Chief Litigation Counsel and manager of the Division of Enforcement. There are 4 divisions:
  - Investigations Group: To identify potential misconduct or high-risk activity among higher education institutions and protect federal funding;

The Legacy of President Obama, cont.

- Borrower Defense Group: To provide legal analysis, support and advice concerning claims of borrowers of Direct Loans;
- Administrative Actions And Appeals Service Group (AAASG): To impose administrative actions such as Emergency, Termination, LS&T or Fine actions. The group will continue to resolve appeals from final audit and program review determinations; and

The Legacy of President Obama, cont.

- Clery Group: To ensure institutions comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. [ED fined Penn State almost $2.4 million for Clery violations. Penn State accepted fine. University of California at Santa Cruz agreed to pay $1.5 million to a former student who was raped by a professor.]

Role of Accreditors Under Scrutiny

- On 6/15/2016, accreditation staff at ED released a report recommending ACICS no longer be recognized.
- On 6/22/2016, Under Secretary Ted Mitchell reminded the National Advisory Committee on Institutional Quality and Integrity (NACIQI) members that accreditors must be held accountable, and he fully supported the staff analysis and recommendation.
- On 6/23/2016, NACIQI voted in support of the Department's recommendations to not re-recognize ACICS.

Role of Accreditors Under Scrutiny, cont.

- On 9/22/2016, this Senior Department Official (SDO) upheld NACIQI and staff recommendations and withdrew ACICS recognition.
- On 10/21/2016, ACICS filed an appeal.
- On 11/21/2016, the SDO responded to ACICS' appeal.
- On 12/12/2016, the Secretary upheld the SDO's decision to cease the recognition of ACICS.
- ED issued to all ACICS schools a provisional Program Participation Agreement with an Addendum giving them 18 months to seek another agency's accreditation.

Role of Accreditors Under Scrutiny, cont.

- On 12/20/2016, Judge Reggie Walton denied ACICS' request to block ED's decision.
- On 1/24/2017, attorneys general from 5 states and D.C. filed a motion to intervene in the defense of the decision to terminate ACICS.
- Judge Walton set the preliminary injunction hearing for 2/1/2017, which was delayed until 2/21/2017.

Role of Accreditors Under Scrutiny, cont.

- On 2/21/2017, U.S. Court Judge Reggie Walton denied a motion filed by ACICS for a preliminary injunction that would have blocked the Department from de-recognizing ACICS. ACICS had not demonstrated “a substantial likelihood” of prevailing on the merits of its case and then-Secretary John B. King, Jr. had the discretion to give ACICS more time, but decided to terminate ACICS because it did not demonstrate that it had suffered irreparable harm. A hearing on the merits has not been scheduled, but both parties are in the process of submitting briefs.

Role of Accreditors Under Scrutiny, cont.

- On 10/15/2015, ED issued a Notice in *Federal Register* for an experimental site initiative whereby an eligible institution enters into a contract with an ineligible entity to provide 50% or more of a program. In addition to being included in the institution’s accreditation, the program must be approved and monitored by an independent quality assurance entity that is qualified to review and monitor the program.
  - The Educational Quality through Innovative Partnerships (EQUIP) is designed to encourage innovation in higher education through partnerships between participating institutions and nontraditional providers.

Role of Accreditors Under Scrutiny, cont.

- Former Secretary Arne Duncan had said in 7/2015 that “accreditors have provided little accountability for some poor-performing institutions and that for many accreditors, student outcomes are far down the priority list, saying: “For the most part, accreditation organizations are the watchdogs that don’t bark.” Now there is more bark and bite.

Role of Accreditors Under Scrutiny, cont.

- On 11/5/2015, ED announced a series of executive actions and proposals to improve coordination with, and clarify the flexibility for, accreditors:
  - Meeting more regularly with accreditors to increase their knowledge of ED policies;
  - Sharing more information with accreditors on actions ED plans to take;

Role of Accreditors Under Scrutiny, cont.

- Requiring information submitted by accreditors to ED to be structured to better distinguish where additional action is needed;
- Requiring and sharing publicly when possible, more information from accreditors on why institutions were placed on probation, warning, or found out of compliance with standard(s); and
- Clarifying the flexibility agencies have to differentiate review processes for institutions.

Role of Accreditors Under Scrutiny, cont.

- On 11/6/2015, ED published each accreditator's Student Achievement Standards for evaluating student outcomes, which is located at: https://www.ed.gov/accreditation.
- On 11/6/2015, ED advanced its transparency agenda for accreditation by:
  - Publishing each accreditors' standards for evaluating student outcomes;
  - Increasing transparency in accreditation process and in institutional oversight;

Role of Accreditors Under Scrutiny, cont.

- Increasing coordination within the Department and with any accreditors and states to improve oversight;
- Publishing key student and institutional metrics by institutions, arranged by accreditors; and
- Promoting greater attention to outcomes with current accreditor review processes.
- See: https://www.ed.gov/news/press-releases/department-education-advances-transparency-agenda-accreditation.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Role of Accreditors Under Scrutiny, cont.

- On 2/4/2016, ED announced that it would require accreditors to provide more information to ED and to the public about sanctions taken against institutions.
  - "Agencies need to do more than certify that institutions make quality offerings available; they must gauge the extent to which institutions actually help more students achieve their goals."
  - Copies of "Strengthening Accreditation Memo" of 1/20/2016 and "Strengthening Accreditation's Focus on Outcomes" of 2/4/2016 are found at: https://sites.ed.gov/ous/2016/02/strengthening-accreditations-focus-on-outcomes/.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Role of Accreditors Under Scrutiny, cont.

- On 4/22/2016, ED sent letters to accreditors providing them with clarification on the flexibility that they have in differentiating their reviews of institutions and programs and encouraging them to us that flexibility to focus their monitoring and resources on student achievement and problematic institutions or programs. Accreditors may differentiate their reviews by:
  - Differing conditions, such as institutions or programs with higher risk due to poor performance, size, volume of student aid, or other factors;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Role of Accreditors Under Scrutiny, cont.

- Focusing on individual standards with particular relevance to student achievement; and
- Ensuring that certain accreditation processes are effective.
- A copy of the 4/22/2016 memo "Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness is found at: https://www.ed.gov/accreditation.

Role of Accreditors Under Scrutiny, cont.

- On 2/22/2017, NACIQI voted 8-2 to recommend that the Secretary deny ABHES' request to expand its scope to the master's degree level even though staff recommended expansion of scope. On 3/6/2017, ABHES appealed NACIQI's recommendation.

Role of Accreditors Under Scrutiny, cont.

- On 4/25/2016, 24 Senate Democrats urged the Department to hold accreditors accountable since they are gatekeepers of the $150 billion in federal revenue that goes to institutions. See http://www.dpcc.senate.gov/?p=issue&id=548.

Role of Accreditors Under Scrutiny, cont.

- Senate Democrats Call for Accreditation Reform. On 9/22/2016, Senators Elizabeth Warren (MA), Dick Durbin (IL), and Brian Schatz (HI) introduced S. 3380, *Accreditation Reform and Enhanced Accountability Act of 2016* (AREAA) :
  - Requires ED to establish standards for student outcomes data (e.g., loan repayment rate, loan default rate, graduation rate, retention rate, student earnings, job placement rate, etc.);
  - Safeguards access by giving accreditors the ability to evaluate college affordability and Pell student enrollment levels;

Role of Accreditors Under Scrutiny, cont.

- Strengthens consumer protections by forcing accreditors to respond quickly to federal and state investigations and lawsuits regarding fraud;
- Increases transparency around accreditation decisions for students, families, and regulators;
- Cleans up conflicts of interest; and
- Increases accountability by giving the Secretary more authority to terminate or fine accreditors that fail to do their job.

Role of Accreditors Under Scrutiny, cont.

- On 3/14/2017, Senators Marco Rubio (R-FL) and Michael Bennet (D-CO) chose to bring back their proposal, S. 615, the *Higher Education Innovation Act*, to create an "alternative system of accreditation for high quality colleges, universities, and other providers."
  - Senator Rubio calls for reform since the current system is a "cartel."
  - The bill calls for a 5-year pilot program that sets up an "alternative, outcomes-based process to access federal student financial aid for previously unaccredited institutions."
  - Unaccredited institutions with positive student outcomes could enter into a contract with ED.

Increased Number of Enforcers

- ED program reviewers;
- Title IV compliance auditors;
- ED recertification process and other updates;
- Certification of GE programs;
- OIG;
- Accrediting agencies;
- State agencies;
- Media;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Increased Number of Enforcers, cont.

- Current and former students and employees;
- CFPB;
- GAO (12/22/2014 GAO report critical of accreditors);
- State AG investigators;
- FTC;
- DoD and Veterans agencies;
- Interagency Task Force; and
- Student Aid Enforcement Unit.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Consumer Financial Protection Bureau (CFPB)

- Created in 2011 as a result of Dodd-Frank to oversee mortgage lending, credit cards and student loans.
- Last 2 years:
  - In 7/2015, CFPB ordered Discover Bank to repay $18.5 million in student loans;
  - In 8/2016, CFPB took action against Wells Fargo's student lending division for illegal student loan practices, ordered to pay $3.6 million penalty and provide $410,000 in relief to consumers;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

Consumer Financial Protection Bureau (CFPB), cont.

- In 9/2016, CFPB fined Bridgepoint Education $8 million for allegedly deceiving students into taking out private loans and ordered to award $23.5 million in student loan relief; and
- On 8/25/2016, CFPB sent a demand to ACICS asking it to respond to questions regarding approval of some for-profit colleges, like Corinthian, and on 4/21/2016, US District Court for the District of Columbia Judge Richard Leon rejected the CFPB's attempt to force ACICS to turn over information about how it approved colleges.

Consumer Financial Protection Bureau (CFPB), cont.

- On 11/18/2016, CFPB asked a federal appeals court to reconsider a ruling made on 10/11/2016 that declared the CFPB's structure unconstitutional because of its single-director structure, which violated the separation of powers principle.
- On 2/26/2017, a U.S. Appeals Court in Washington granted the CFPB's request to reconsider the 10/11/2016 decision. An expanded panel will hear the re-argument on 5/24/2017.
- On 3/17/2017, the Department of Justice filed an amicus brief for the U.S. supporting the opinion of the three-judge panel of the U.S. Court of Appeals for the D.C. Circuit that the CFPB's structure is unconstitutional.
- What is the future of the CFPB?

Interagency Task Force

- Created in 2015 to oversee proprietary schools; and
- Representatives from:
  - Department of Education;
  - Consumer Financial Protection Bureau (CFPB);
  - Securities and Exchange Commission (SEC);
  - Federal Trade Commission (FTC);

Interagency Task Force, cont.

   - Internal Revenue Service (IRS); and
   - Departments of Veterans Affairs, Defense, Treasury, Labor, and Justice.
- What is the future of the Interagency Task Force?

POWERS
POWERS PYLES SUTTER & VERVILLE PC

FY 2013 3-Year Cohort Default Rate Declines

- On 9/28/2016, ED announced that the national 3-year cohort default rate (CDR) declined from 11.8% in FY 2012 to 11.3% in FY 2013.
- From FY 2012 to FY 2013, CDRs fell for public and proprietary institutions while rising slightly for borrowers at private and foreign schools:
   - For proprietary schools, the FY 2013 rate fell from 15.8% in FY 2012 to 15.0%;

POWERS
POWERS PYLES SUTTER & VERVILLE PC

FY 2013 3-Year Cohort Default Rate Declines, cont.

   - For public institutions, the FY 2013 rate fell from 11.7% in FY 2012 to 11.3%; and
   - For private and foreign institutions, the FY 2013 rate increased from 6.8% in FY 2012 to 7.0%.

POWERS
POWERS PYLES SUTTER & VERVILLE PC

The End

Questions?

SEVENTH FLOOR
1501 M STREET, NW
WASHINGTON, DC 20005
PHONE: (202) 466-6550 FAX: (202) 785-1756
www.ppsv.com
Sharon.Bob@ppsv.com

Sharon H. Bob, Ph.D.

Practice Areas:
- Education
- Title IV Eligibility & Compliance
- Program Reviews and IG Audits
- Accreditation
- Mergers & Acquisitions
- Public Policy & Government Relations
- State Licensing
- Education Policy

Member:
- NASFAA
- CCA

Education:
- Ph.D., University of Maryland, 1976
- BA, State University of Buffalo, 1971, summa cum laude

Sharon H. Bob, Ph.D., Higher Education Specialist on Policy and Regulation, is a member of the Education Group at the Washington, D.C. law firm of Powers Pyles Sutter & Verville, P.C. Dr. Bob advises all sectors of higher education regarding strategic issues pertaining to their participation in the federal student financial assistance programs, accreditation, licensure, education tax benefits, and related regulatory matters.

Dr. Bob advises public and private colleges and universities, as well as private and publicly-traded companies. In this role, she provides clients with detailed technical guidance related to compliance with applicable statute and regulations. She regularly assists postsecondary educational institutions on issues relating to institutional eligibility, program eligibility, student eligibility, financial responsibility and administrative capability standards, changes of ownership, adding locations and programs, program reviews and compliance audits, and institutional responsibilities for the education tax benefits. Through training seminars and on-site reviews, she assists clients in complying with the federal requirements for administering federal student financial assistance. Dr. Bob has authored numerous articles on federal financial aid issues for *The Greentree Gazette, NASFAA's Journal of Student Financial Aid, NASFAA's Student Aid Transcript,* the *Career College Link*, and other higher education publications and frequently speaks at meetings of college officials and student aid administrators.

Dr. Bob received her undergraduate degree *summa cum laude* from the State University of New York at Buffalo and was elected to *Phi Beta Kappa*. She received her doctorate from the University of Maryland.

Powers Pyles Sutter & Verville is a Washington, D.C.-based law firm that focuses on health care, education, and the law of tax-exempt organizations.