

POWERS
POWERS PYLES SUTTER & VERVILLE, PC

**NASASPS 2016 Annual
Conference**

Austin, TX

April 11, 2016

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



**Washington Potpourri: What is
the Legislative and Regulatory
Outlook for 2016?**

April 11, 2016

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

▶ 2

**Reauthorization of the *Higher
Education Act* and Other
Legislative Activities**

POWERS
POWERS PYLES SUTTER & VERVILLE, PC

▶

Alexander's Plans for Reauthorization of the Higher Education Act

- Originally, Chairman Alexander planned to move to reauthorize the HEA after reauthorization of the *No Child Left Behind Act*, which occurred on 12/10/2015, with the enactment of the *Every Student Succeeds Act* (P.L. 114-95). However, more recently, Chairman Alexander said this year would be challenging although he hoped that the House and Senate could agree on a bill to eliminate or simplify some federal rules.

▶ 4



Alexander's Plans for Reauthorization of the Higher Education Act, cont.

- On 2/16/2016, Chairman Alexander stated that he hoped some smaller bills could pass this year to reduce the number of items on the FAFSA, to allow students to accelerate their programs, and to require institutions to have "skin in the game."

▶ 5



Alexander's Plans for Reauthorization of the Higher Education Act, cont.

- On 1/7/2015, Senator Lamar Alexander (R-TN) became the new Chairman of the Senate Health, Education, Labor, and Pensions Committee (HELP) Committee, and immediately made known his priority for student aid simplification. Senators Alexander, Michael Bennet (R-NC), Richard Burr (R-NC), Cory Booker (D-NJ), Johnny Isaakson (R-GA), and Angus King (I-ME) introduced the *Financial Aid Simplification (FAST) Act*, which would:

▶ 6



Alexander's Plans for Reauthorization of the Higher Education Act, cont.

- ❖ Eliminate the FAFSA and reduce it to two items: (1) What is your family size?; and (2) What was your household income two years ago?
- ❖ Streamline the federal grant and loan programs to one Pell Grant Program and reduce the 6 different loan programs into three: Undergraduate, graduate, and parent loan program;
- ❖ Restore year-round Pell Grant allowing students to complete college sooner;



▶ 7

Alexander's Plans for Reauthorization of the Higher Education Act, cont.

- ❖ Discourage overborrowing by limiting borrowing to enrollment status of student; and
- ❖ Simplify repayment plans to two simple plans, an income-based plan and a 10-year repayment plan.



▶ 8

King and Burr Introduce the Repay Act of 2015

- Chairman Alexander supports *Repay Act of 2015*, introduced on 1/7/2015 by Senators Angus King (I-ME) and Richard Burr (R-NC), that would streamline federal loan repayment plans:
 - ❖ Fixed 10-year standard plan; and
 - ❖ Simplified income-driven repayment (SIDR) plan.

NOTE: There are currently 8 repayment plans.



▶ 9

Kline Defines Higher Education Committee Goals for the 114th Congress

- On 1/22/2015, Chairman of the House Education and the Workforce Committee John Kline (R-MN) announced the Committee's plan for reauthorization of the HEA:
 - ❖ Empower students and families to make informed decisions with access to easy-to-understand information;
 - ❖ Simplify and improve student aid;
 - ❖ Promote innovation, access, and completion; and

▶ 10



Kline Defines Higher Education Committee Goals for the 114th Congress, cont.

- ❖ Provide strong accountability and preserve a limited federal role ensuring that federal rules and reporting requirements costs are not passed onto to schools, resulting in higher tuition and fees.
- On 3/21/2016, the House Education and the Workforce Committee held an open forum to hear from institutional representatives, faculty members, student advocates, and education policy think tanks on ideas for consideration in the upcoming reauthorization of the HEA.

▶ 11



Kline Defines Higher Education Committee Goals for the 114th Congress, cont.

Ideas included:

- ❖ making college more accessible and affordable;
- ❖ expanding access to alternative methods of education; and
- ❖ providing relief to students hindered by student debt.

▶ 12



Senate Task Force Releases Report on Streamlining and Reducing Regulations

- On 2/12/2015, Republicans and Democrats on the Senate HELP Committee released their report, "Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education," which recommends streamlining and reducing federal regulations.
- A copy of the report is found at: http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.

▶ 13



Senate Task Force Releases Report on Streamlining and Reducing Regulations, cont.

- At a hearing held on 2/24/2015, Vanderbilt University's Chancellor Nick Zeppos testified that it cost the institution \$14 million annually to comply with federal regulations.
- Senator Alexander said: "These examples, and others like them, are sloppy, inefficient governing that wastes money, hurts students, discourages productivity, and impedes research."

▶ 14



Senate and House Republicans Introduce Bill to Reform the Accreditation Process

- 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.

▶ 15



Senate and House Republicans Introduce Bill to Reform the Accreditation Process, cont.

- 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.

▶ 16



Alexander Seeks Input from Stakeholders on Accreditation, Risk Sharing, and Consumer Information

- On 3/23/2015, Chairman Alexander released three white papers and sought feedback:
- Report on Accreditation: Describes a need to “redesign and reform accreditation to strengthen the quality of colleges and universities, promote competition and innovation in higher education, and provide accountability to government stakeholders and taxpayers.” The following problems need to be addressed:
 - ❖ Accreditation does not always produce or improve educational quality;

▶ 17



Alexander Seeks Input from Stakeholders on Accreditation, Risk Sharing, and Consumer Information, cont.

- ❖ Accreditation can inhibit innovation and competition;
- ❖ Federal recognition can be political and bureaucratic; and
- ❖ Accreditation can be costly, burdensome, and inefficient.
- Report on Risk Sharing: Calls for an improvement of federal incentives so that colleges and universities have a stronger vested interest and more responsibility in reducing excessive student borrowing and

▶ 18



Alexander Seeks Input from Stakeholders on Accreditation, Risk Sharing, and Consumer Information, cont.

prioritizing higher levels of student success and completion. The following issues need to be addressed:

- ❖ Generous cost of attendance policies can allow for significant student debt unrelated to tuition and fees;
- ❖ Some institutions have high default rates;
- ❖ Taxpayers and students bear the burden and consequence of default; and

▶ 19



Alexander Seeks Input from Stakeholders on Accreditation, Risk Sharing, and Consumer Information, cont.

- ❖ Some institutions have low completion rates.
- **Report on Consumer Information:** Calls for a new approach to focus the federal role on postsecondary data and transparency. The public needs access to accurate, comparable data on institutions of higher education to ensure purposeful and consumer-friendly information so that students and families can select the college or university that best fits their needs:

▶ 20



Alexander Seeks Input from Stakeholders on Accreditation, Risk Sharing, and Consumer Information, cont.

- ❖ Determine the proper role of the federal government in postsecondary data transparency;
- ❖ Develop postsecondary data policy that captures better and more inclusive data; and
- ❖ Identify critical data elements and formats to make information more useful for consumers.
- The three papers are available at: [http://www.help.senate.gov/newsroom/ress/rel...
http://www.help.senate.gov/newsroom/ress/rel...
http://www.help.senate.gov/newsroom/ress/rel...](http://www.help.senate.gov/newsroom/ress/rel...)

▶ 21



Senators Alexander and Murray Establish Working Groups to Address HEA Reauthorization Issues

- On 5/21/2015, Chairman of the HELP Committee Lamar Alexander (R-TN) and Ranking Member of the HELP Committee Patty Murray (D-WA) announced the establishment of four major working groups to prepare for the HEA reauthorization:
 - ❖ Accountability;
 - ❖ Accreditation;
 - ❖ College affordability and financial aid; and
 - ❖ Campus sexual assault.

▶ 22



Senators Alexander and Murray Establish Working Groups to Address HEA Reauthorization Issues, cont.

- 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.”
- Senator Murray said: “Access to quality and affordable higher education is important for students and it is a crucial part of building an economy that works for all families, not just the wealthiest few.”

▶ 23



Senators Introduce Risk Sharing Bill

- On 5/1/2015, Senators Jack Reed (D-RI), Dick Durbin (D-IL), Chris Murphy (D-CT), and Elizabeth Warren (D-MA) introduced the *Protect Student Borrowers Act of 2015* (S. 1102), which would require institutions to assume some of the financial risk of student loan defaults. Institutions will have more “skin in the game” when it comes to student loan debt by setting stronger market incentives for these institutions to provide better and more affordable education to students. The bill would require:

▶ 24



Senators Introduce Risk Sharing Bill, cont.

- ❖ Institutions with a minimum 25% Direct Loan participation rate among its students to share the risk on student loans.
- ❖ Risk sharing would mean payments to ED of a percentage of the institution's defaulted loan volume that would vary from 5% to 20% depending on the institution's cohort default rate.
- ❖ If an institution develops and implements an approved student loan management plan, ED must modify the risk-sharing requirements, or ED may reduce or waive an institution's risk-sharing payments.

▶ 25



Senators Introduce Risk Sharing Bill, cont.

- At a hearing held on institutional risk sharing, Chairman of the HELP Committee Lamar Alexander (R-TN) said that no institutions should be exempt from policies requiring institutions to have "skin in the game" on student loan defaults.
- Ranking Member Patty Murray (D-WA) said higher education institutions need to be more accountable in order to ensure taxpayers' investment is put to good use.

▶ 26



Senator Sherrod Brown Introduces Bill to Ban Colleges from Spending Federal Dollars for Marketing and Recruiting

- On 7/30/2015, Senator Sherrod Brown (D-OH) introduced the *Protecting Financial Aid for Students and Taxpayers Act* (S. 1908), which would ban colleges and universities from using proceeds received from federal education assistance funds for advertising, marketing, and recruiting.
- ❖ While the bill applies to all colleges and universities, it is aimed at for-profit schools from using federal funds to benefit shareholders since the bill would require any college that receives more than 65% of its revenue from federal funds to report its marketing spending to ED.

▶ 27



Senator Sherrod Brown Introduces Bill to Ban Colleges from Spending Federal Dollars for Marketing and Recruiting, cont.

- ❖ The bill would bar colleges and universities from using the educational benefits from service members and veterans who receive funds from DoD and VA.
- On 11/19/2015, Congressman Raul Grijalva (D-AZ) introduced the *Protecting Financial Aid for Students and Taxpayers Act* (H.R. 4109) that would restrict institutions from using revenues derived from Federal funds for advertising, marketing, and recruiting.

▶ 28



Senate and House Members Introduce Legislation to Protect Students

- On 9/29/2015, Senators Chris Murphy (D-CT), Dick Durbin (D-IL), Elizabeth Warren (D-MA), and Sherrod Brown (D-OH) introduced the *Students Before Profits Act of 2015* (S. 2098), 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, employment prospects, or default rates, and uses those penalties to fund a Student Relief Fund to help defrauded students;

▶ 29



Senate and House Members Introduce Legislation to Protect Students, cont.

- ❖ Improve oversight of default rate manipulation by requiring the Secretary of Education to use corrected data to recalculate student loan default rates for institutions engaged in default rate manipulation and determine whether the school should be disqualified from participating in financial aid programs;
- ❖ Make college executives share the risk, giving the Department broader discretion to require owners and executives to assume personal liability for financial losses associated with Title IV funds and including them among those against whom the Department can pursue a claim after discharging borrowers' debts; and

▶ 30



Senate and House Members Introduce Legislation to Protect Students, cont.

- ❖ Prevent “repeat offenders” by prohibiting board members and executive officers of an institution against which the Department has brought an enforcement action from serving in leadership positions at another college.
- On 11/5/2015, Congresswoman Maxine Waters (D-CA) introduced the companion bill to the *Students Before Profits Act* (H.R. 3992).
- On 11/17/2015, Congressman Waters also introduced H.R. 4054 that would revise the 90/10 rule to include veterans’ education benefits and DoD Tuition Assistance funds as federal funds in the 90/10 calculation.

▶ 31



Senate and House Members Introduce Legislation to Protect Students, cont.

- On 11/19/2015, Congressman Steve Cohen (D-TN) introduced the *Protecting Our Students and Taxpayers (POST) Act* (H.R. 4101), which would amend the HEA that would modify the 90/10 calculation to be 85/15 and would change the definition of what counts as federal revenue so that it would include all federal funds, including veterans’ benefits and DoD Tuition Assistance funds. This is a companion bill to *Protecting Our Students and Taxpayers (POST) Act* (S. 1908), introduced on 7/30/2015.

▶ 32



Senate Members Introduce Bills to Empower Students to Make Informed Decisions

- On 10/7/2015, Senators Chuck Grassley (R-IA) and Al Franken (D-MN) introduced two bills to give students and parents better information about costs of attending college:
 - ❖ *Net Price Calculator Improvement Act* (S. 2150) would improve the effectiveness of and access to net price calculators. Congressmen Ruben Hinojosa (D-TX) and Elijah Cummings (D-MD) introduced a companion bill (H.R. 4533) on 2/11/2016; and
 - ❖ *Understanding the True Cost of College Act* (S. 2149) would establish a universal award letter so students could compare their aid packages.

▶ 33



**Senate Democrats Introduce
In the Red Act**

- On 3/15/2016, Senate Democrats introduced the *Red (Reducing Educational Debt) Act (S. 2677)*, which includes some of the education legislation introduced in 2015 that would address college affordability and put America on path to debt-free college:
 - ❖ Senator Elizabeth Warren’s (D-MA) proposal, *Bank on Student’s Emergency Loan refinancing Act*, would allow borrowers to refinance their federal and private student loans at a lower interest rate;
 - ❖ Senator Mazie Hirono’s (D-HI) proposal, *Pell Grant Cost*

▶ 34



**Senate Democrats Introduce
In the Red Act, cont.**

- of *Tuition Adjustment Act*, would index Pell Grant awards to inflation to ensure that government aid covers more of the cost of college; and
- ❖ Senator Tammy Baldwin’s (D-WI) *America’s College Promise Act*, would provide a federal match of \$3 for every dollar invested by the State to waive community college tuition and fees for eligible students before other financial aid is applied. The bill reaffirms support by the Democrats for President Obama’s call to make community colleges free.
- ❖ The bill also includes language that would enhance accountability for schools but does not include legislative language.

▶ 35



**Senate Democrats Introduce Bills to
Address Student Debt Crisis**

- On 1/21/2016, Senator Richard Blumenthal (D-CT) introduced two bills:
 - ❖ The *Strengthening Forgiveness for Public Service Act (S. 2463)* would expand the Public Service Loan Forgiveness (PSLF) program to provide meaningful student debt relief to teachers, police officers, public health workers and others who dedicate their life to public service; and
 - ❖ *Make Student Grants Truly Tax-Free Act (S. 2462)* would eliminate the tax penalty paid by low-income students who have federal grants or scholarships for college.

▶ 36



Senate Democrats Introduce Bills to Address Student Debt Crisis, cont.

- On 1/21/2016, Senator Mark Warner (D-VA) introduced two bills:
 - The *Dynamic Student Loan Repayment Act* (S. 2456), co-sponsored by Senator Marco Rubio (R-FL), would replace the complicated array of loans, subsidies, deferments, forbearances, and repayment options with a single, streamlined, and user-friendly repayment plan that allows the borrower to pay an affordable percentage of a borrower's income until the loan is repaid.

37

POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

Senate Democrats Introduce Bills to Address Student Debt Crisis, cont.

- The *Employer Participation in Repayment Act* (S. 2457), co-sponsored by Senators John Thune (R-SD) and Shelley Moore Capito (R-WV), would allow employers to contribute up to \$5,500 pre-tax to their employees' federal or private student loans, providing employers with a new tool to recruit and retain quality employees. Currently, the Employer Education Assistance Program allows employers to contribute pre-tax earnings to help employees finance continued education, but does not provide relief for individuals who already have incurred student loan debt in their undergraduate program.
- A similar bill was introduced in the House by Reps. Rodney Davis (R-IL) and Gwen Graham (D-FL), *Employer Participation in Student Loan Assistance Act* (H.R. 3861).

38

POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

President Signs Appropriations and Perkins Loan Extension Bills into Law

- On 12/18/2015, the President signed into law the *Consolidated Appropriations Act, 2016* (P.L. 114-113), which provided \$1.8 trillion in funding for the federal government for FY 2016, and \$680 billion in tax breaks over 10 years.
 - Most of the student aid programs will be level funded for 2016-2017;
 - Pell Grants will increase to \$5,845, a \$70 increase; and
 - ED is required to publish a common policies and procedures manual for Direct Loan servicing by 3/1/2016.

39

POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

President Signs Appropriations and Perkins Loan Extension Bills into Law, cont.

- On 12/18/2015, the President signed into law the *Federal Perkins Loan Extension Act of 2015* (P.L. 114-105), which extends the Perkins Loan program through 9/30/2017.
 - ❖ Perkins Loan program expired on 9/30/2015 and extension was blocked by Senator Lamar Alexander (R-TN) because he wants to simplify programs.
 - ❖ Extension agreed to with the expectation to take up program in HEA reauthorization.
 - ❖ Allows current and new undergraduates to be eligible through 2017-2018; and


POWERS PYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 40

President Signs Appropriations and Perkins Loan Extension Bills into Law, cont.

- ❖ Allows current graduate borrowers to be eligible through 2016-2017.
- On 2/17/2016, ED released DCL GEN-16-05 that provides information on the Perkins Loan extension. See: <http://ifap.ed.gov/dpclatters/GEN1605.html>.


POWERS PYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 41

Obama Administration Unveils College Success Proposals

- On 1/19/2016, the Obama Administration announced two proposals that would expand the Pell Grant program by:
 - ❖ Pell for Accelerated Completion: Bringing back year-round Pell grant eligibility; and
 - ❖ On-Track Pell Bonus: Creating a \$300 annual bonus for Pell Grant recipients who take 15 credits per semester.
- The proposals officially named “Pell for Accelerated Completion” would require approval by Congress and would cost an additional \$2 billion.


POWERS PYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 42

Obama Administration Unveils College Success Proposals, cont.

- A copy of the fact sheet is found at: <http://www.ed.gov/news/press-releases/fact-sheet-helping-more-americans-complete-college-new-proposals-success>
- On 3/16/2016, ED released a Fact Sheet regarding "College Completion Drives Student Success" that includes these proposals, which is found at: http://www.ed.gov/news/press-releases/fact-sheet-college-completion-drives-student-success?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

▶ 43



President Releases FY 2017 Budget for the 2017-2018 Award Year

- On 2/9/2016, President Obama released his FY 2017 budget. Highlights for the higher education community are:
 - ❖ Increasing the maximum Pell Grant to \$5,935, a \$120 increase;
 - ❖ Level-funding FWS and FSEOG funds at the FY 2016 amount;
 - ❖ Developing "America's College Promise," a 10-year, \$60.8 billion proposal to make two-years of community college free;

▶ 44



President Releases FY 2017 Budget for the 2017-2018 Award Year, cont.

- ❖ Creating a College Opportunity Bonus program that would provide \$5.7 billion over 10 years to schools that enroll and graduate low-income students on-time;
- ❖ Dramatically reducing the number of questions on the FAFSA by eliminating 30 questions related to "assets, non-IRS untaxed income, non-IRS income exclusions, and other income adjustments";
- ❖ Decreasing the percentage of funds at proprietary institutions that can come from federal funds from 90 percent to 85 percent and counting Department of Defense tuition assistance and GI Bill benefits as federal funds;

▶ 45



President Releases FY 2017 Budget for the 2017-2018 Award Year, cont.

- ❖ Establishing Pell for Accelerated Completion (Year-Round Pell): Limited to 150% of a student’s regular Pell Grant award;
- ❖ Establishing On-Track Pell Bonus: Students who enroll in 15 or more credits per semester would be eligible for an additional \$300 annual award;
- ❖ Establishing Second Chance Pell: Individuals incarcerated in federal or state penal institutions would be eligible for Pell Grant funds;
- ❖ Modifying SAP to “encourage students to complete their studies on time,” but there are no details in the budget proposal;

▶ 46



President Releases FY 2017 Budget for the 2017-2018 Award Year, cont.

- ❖ Making Perkins Loans unsubsidized with the same interest rate as the Unsubsidized Stafford Loan;
- ❖ Making the Revised Pay As You Earn (REPAYE) repayment plan the only income-driven repayment plan;
- ❖ Seeking \$13.6 million to create and expand the Student Aid Enforcement Unit; and
- ❖ Modifying tax provisions such as eliminating the lifetime learning credit and expanding the American Opportunity Tax Credit.

▶ 47



President Releases FY 2017 Budget for the 2017-2018 Award Year, cont.

- Most Republicans panned the proposals.
- Information on the FY 2017 budget proposal is found at:
<http://www2.ed.gov/about/overview/budget/budget17/index.html>.

▶ 48



Regulatory Activities

49

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

Obama Releases Student Aid Bill of Rights

- On 3/10/2015, President Obama signed a Presidential Memorandum directing ED and other federal agencies to work to help borrowers afford their monthly loan payments including:
 - ❖ A state-of-the-art complaint system to ensure quality service and accountability for ED, its contractors, and colleges;
 - ❖ A series of steps to help students responsibly repay their loans, including affordable monthly payments; and

50

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

Obama Releases Student Aid Bill of Rights, cont.

- ❖ New steps to analyze student debt trends and recommend legislative and regulatory changes.
- ❖ In addition, the White House is releasing state-by-state data that shows the outstanding federal student loan balance and total number of borrowers who can benefit from these actions.
- A copy of the press release is found at: <https://www.whitehouse.gov/the-press-office/2015/03/10/fact-sheet-student-aid-bill-rights-taking-action-ensure-strong-consumer->

51

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

Revised Pay As You Earn (REPAYE) Plan

- As part of the Administration’s continued efforts to give borrowers more and better options to manage their student debt, the Department announced that all Direct Loan borrowers may enroll in the Revised Pay As You Earn (REPAYE) Plan. Negotiations held from 2/2015 to 4/2015 and consensus was reached on the REPAYE plan that extends the 10% income cap of discretionary income on loan payments to all borrowers regardless of when they borrowed.


POWERS PILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 52

Revised Pay As You Earn (REPAYE) Plan, cont.

- Forgives any remaining debt after 20 or 25 years of repayment.
- Provides access to the REPAYE Plan to an additional 6 million federal loan borrowers and ED estimates 2 million borrowers will enroll, which will cost over \$15 billion over 10 years.
- Final Regulations published: 10/30/2015.
- Early Implementation: 12/17/2015.


POWERS PILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 53

Gainful Employment Rulemaking

- ED states that defining gainful employment in a recognized occupation establishes:
 - ❖ An accountability framework; and
 - ❖ A transparency framework.
- While the U.S. District Court for DC vacated the rules promulgated in 2010 and 2011, except for GE disclosures, the Court agreed that the Secretary had the authority to define “gainful employment.”
- Three sessions of negotiations held without reaching consensus.


POWERS PILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 54

Gainful Employment Rulemaking, cont.

- Notice of Proposed Rulemaking: March 25, 2014.
- Over 95,000 comments received.
- Final rule: October 31, 2014 (212 pages).
- Effective date: July 1, 2015.



POWERS FYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 55

Which Programs are GE Programs?

- At public and non-profit institutions, GE programs are generally all non-degree programs.
- At proprietary institutions, all programs are GE program except for:
 - ❖ Preparatory coursework necessary for enrollment in an eligible program; and
 - ❖ Bachelor's degree programs in liberal arts offered since January 2009 that are offered by a proprietary institution that has been regionally accredited since October 2007.



POWERS FYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 56

Which Programs are GE Programs? cont.

- Electronic Announcement #53 reminds institutions of definition of GE programs:
<http://www.ifap.ed.gov/eannouncements/052015GEAnnouncement53WhatisaGEProgram.html>



POWERS FYLES SUTTER & VERVILLE P.C.
ATTORNEYS AT LAW

▶ 57

GE Disclosures

- Must follow current rules until January 2017, which include for each program:
 - ❖ The CIP code and the occupations (by name and SOC codes) that the program prepares students to enter, along with links to the occupational profiles on O*NET;
 - ❖ The on-time graduation rate;
 - ❖ The tuition and fees charged for completing the program within normal time frame, the typical costs for books and supplies, and the cost of room and board, if applicable. Other costs may be included but must provide a link to include other costs, such as transportation and living expenses;

▶ 58



GE Disclosures, cont.

- ❖ The placement rate for students completing the program if required by a state and/or accrediting agency;
- ❖ The median loan debt incurred by students completing the program and the institution must identify separately, the median loan debt from title IV, HEA loans, the median loan debt from private educational loans; and the median loan debt for institutional financing plans owed to the institution at the time of graduation.

▶ 59



GE Disclosures, cont.

- ❖ Must use template to make disclosures for the 2014-2015 award year by 1/31/2016, found at: <http://www.ifap.ed.gov/eannouncements/102315GEAnnounce65DisclosureTemplateforGEProg1415.html>.

▶ 60



Gainful Employment Metrics

- 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 – (\$11,880 (2015 Poverty Level) X 1.5)
 - ❖ Passing: Annual D/E <= 8% or Discretionary D/E <= 20%
 - ❖ Failing: Annual D/E > 12% and Discretionary D/E > 30%
 - ❖ Zone: Annual D/E > 8% and <= 12% or Discretionary D/E > 20% and <= 30%

▶ 61



Gainful Employment Metrics, cont.

- Poverty Guideline for 2015 will be used, which will be published in 1/2016.
- 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
- Program Loses Title IV Eligibility if:
 - ❖ D/E Measures - Fails in two out of three years; OR
 - ❖ D/E Measures - Fails or in the zone for four consecutive years.

▶ 62



GE Reporting

- GE Reporting:
 - ❖ Report all Title IV students by 7/31/2015: Report 2008-2009 through 2013-2014 award years.
 - ❖ Report 2014-2015 award year by 10/1/2015.
 - ❖ ONLY submit data on students enrolled in a GE program; and
 - ❖ ONLY submit data on Title IV recipients.
- NOTE: Must report 2015-2016 award year by 10/1/2016.

▶ 63



Gainful Employment Implementation

Disclosures	Reporting	Program Certifications	Disclosures (NEW)
1/31/2016	7/31/2015	12/31/2015	1/1/2017
(Current Rules)	(2008/2009 to 2013/2014)		(New Rules)
	10/1/2015 (2014/2015)		

Debt-to-Earnings Rate Calculation Process

Reporting	Schools Receive Completer Lists	Schools May Challenge Completer List Data	Schools Receive Draft Debt-to-Earnings rates	Schools May Challenge D/E Rate Details	Schools receive Final Debt-to-Earnings Rates *
7/31/2015 10/1/2015	Spring 2016	45 days	Fall 2016	45 days	Spring 2017
Schools report GE data to NSLDS					

Debt-to-Earnings Rate Calculation Process, cont.

- *Schools may notify FSA of Intent to file an Alternative Earnings Appeals within 14 days after issuance of Notice of Determination of final D/E rates that GE program is failing or in the zone and must submit Appeal documents within 60 days of the Notice of Determination.

Certifications, cont.

- By 12/31/2015, as a condition of continued participation in the Title IV programs, an institution was to certify that each of its GE programs meets the requirements.
 - ❖ With one exception, the Department required each institution to provide to the Department by no later than 12/31/2015 a “transitional certification” signed by the institution’s most senior executive officer that each of the institution’s currently eligible GE programs included on its Eligibility and Certification Approval Report (ECAR) meets the requirements outlined in 34 CFR 668.414(d).



POWERS PYLES SUTTER & VERVILLE PC

▶ 67

Certifications, cont.

- ❖ The exception to the rule is if the institution already made the required certification in its Program Participation Agreement between July 1 and December 31, 2015, then the institution was not required to provide the transitional certification to the Department.
- ❖ The certification is to be signed by the senior executive officer.
- ❖ The institution is certifying that each GE program:
 - ▶ Is approved by the accrediting agency and state agency; and
 - ▶ Its graduates qualify to meet educational prerequisites of the licensing or certification exam required to work in the state, if any.



POWERS PYLES SUTTER & VERVILLE PC

▶ 68

Certifications, cont.

- NOTE: The Department stated (at page 64989 of the Preamble of the 10/31/2014 final regulations) that the certification requirements will create an enforcement mechanism for the Department to take action if a required approval has been lost, or if a certification that was provided was false. The Department also stated that Federal or State law enforcement agencies also may be able to prosecute any misrepresentations made by institutions in their own investigations and enforcement actions.



POWERS PYLES SUTTER & VERVILLE PC

▶ 69

**State Authorization Rules
in Effect 7/1/2015**

- On 6/19/2015, ED issued DCL GEN-15-10 reminding institutions that they must be in compliance with the state authorization rules on 7/1/2015.
- In order to participate in Title IV programs, an institution must be legally authorized by a State to provide a postsecondary education program, and the State must have a system for students to file complaints against colleges.



▶ 70

**State Authorization Rules
in Effect 7/1/2015, cont.**

- ED will confirm that the institutions have obtained “sufficient State authorization” when the institution is reviewed “in the ordinary course of business, including when an institution applies to the Department for recertification for eligibility for Title IV aid, for additional locations or programs, or other matters requiring such review.”
- A copy of DCL GEN-15-10 is found at <http://www.ifap.ed.gov/dpccletters/GEN1510.html>



▶ 71

**ED Issues Memo Describing Incentive
Compensation Enforcement Action**

- On 6/10/2015, ED issued an electronic announcement directing the staff on how to respond to violations of the prohibition on payment of incentive compensation.
- Memo repeals 2002 memo that restricted the enforcement action to use of fines and advises that ED may take other actions including:
 - ❖ Repaying all Title IV funds improperly received by ED;
 - ❖ Impose a fine; or
 - ❖ L, S & T the institution’s participation in Title IV programs.



▶ 72

ED Issues Memo Describing Incentive Compensation Enforcement Action

- A copy of the memo is found at:
- <http://www.ifap.ed.gov/eannouncements/061015EnforcementProhibitionOnIncentiveCompPay.html>.

▶ 73



ED Publishes Notice Regarding Incentive Compensation Rule

- On 10/29/2010, ED removed the safe harbors regarding the statutory ban on enrollment-based compensation to recruiters in the final regulations on program integrity;
- On 11/27/2015, ED issued a notice in the Federal Register that it has reconsidered its decision and does not interpret the incentive compensation rule to prohibit compensation for recruiters that is based upon students' graduation from, or completion of, educational programs "because, at this time,

▶ 74



ED Publishes Notice Regarding Incentive Compensation Rule, cont.

it lacks evidence to demonstrate that schools are using graduation-based or completion-based compensation as a proxy for enrollment-based compensation."

- A copy of the Notice is found at: <http://ifap.ed.gov/fregisters/attachments/FR112715.pdf>

▶ 75



Department Releases FY 2012 Official Three-Year Cohort Default Rates

- On 9/30/2015, the Department of Education announced that the official FY 2012 three-year cohort default rate is 11.8%, down from the FY 2011 three-year cohort default rate of 13.7%.
- The FY 2012 is down across all sectors but the proprietary school sector has the biggest drop: 15.8% for FY 2012 as compared to 19.1% for FY 2011.
- A copy of ED's announcement is found at: <http://www.ed.gov/news/press-releases/cohort-default-rate-continues-drop-across-all-higher-ed-sectors>.

▶ 76



Obama Administration Puts Pressure on Accrediting Agencies

- On 11/6/2015, ED announced a number of executive actions to improve current accreditation process:
 - ❖ As of 11/6/2015, ED published each accreditor's Student Achievement Standards for evaluating student outcomes;
 - ❖ As of 11/6/2015, accreditors must submit decision letters to ED, which will be posted online when institutions are placed on probation;
 - ❖ Created new, simpler accreditation homepage at: <http://www.ed.gov/accreditation>.

▶ 77



Obama Administration Puts Pressure on Accrediting Agencies, cont.

- ❖ The Secretary seeks input from Assistant Secretary of Postsecondary Education and FSA to improve coordination across accreditors, OPE, and FSA;
- ❖ Published key student and institutional metrics for institutions arranged by accreditors with data drawn from College Scorecard; and
- ❖ Promoted greater attention to outcomes within current accreditor review processes by giving accrediting staff in OPE access to critical outcomes data, state and federal litigation reports, and other information on each agency's schools prior to conducting reviews.

▶ 78



Obama Administration Puts Pressure on Accrediting Agencies, cont.

- The press release is found at: <http://www.ed.gov/news/press-releases/department-education-advances-transparency-agenda-accreditation>.

▶ 79



ED Calls for Increasing Coordination with Accreditors

- On 1/20/2016, Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning and Innovation, and James W. Runci, COO, FSA, sent a memorandum to John King, Acting Secretary of ED, making recommendations to implement executive actions to improve accreditors and the Department’s oversight activities. After meeting with accreditors, the recommendations were made:

▶ 80



ED Calls for Increasing Coordination with Accreditors, cont.

- ❖ Increase sharing of ED background information like when institutions are placed on HCM and sharing Program Review Reports;
- ❖ Directing accrediting agencies to separate information submitted to ED by negative actions and all other actions;
- ❖ Requiring accrediting agencies to submit reasons for placing institutions on probation or equivalent status; and
- ❖ Requesting accrediting agencies to submit information for key actions below level of probation.

▶ 81



**ED Calls for Increasing
Coordination with Accreditors, cont.**

- A copy of the memo is found at:
<http://www2.ed.gov/admins/finaid/accred/memo-accreditor-recommendations-01202016.doc>.

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 82

**ED Announces New Requirements
for Accrediting Agencies**

- On 2/4/2016, ED announced in a blog post that it would require accreditors to provide more information to ED and to the public about sanctions against institutions, including the reasons.
- The blog post stated: "Agencies need to do more than certify that institutions make quality offerings available; they must gauge the extent to which the institutions actually help more students achieve their goals. And

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 83

**ED Announces New Requirements
for Accrediting Agencies, cont.**

because of our belief in the importance of equal opportunity to learn and achieve that means strong outcomes for all students, not just some."

- A copy of the blog post is found at:
<https://sites.ed.gov/ous/2016/02/strengthening-accreditations-focus-on-outcomes/>.

POWERS
POWERS FYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 84

CFPB Battles with ACICS

- The CFPB is taking on ACICS and demanding information about its approval of some for-profit colleges.
- On 8/25/2015, CFPB sent a demand to ACICS asking it to respond to questions about its approval of some of the Corinthian Colleges and other for-profit colleges.
- ACICS refused to provide that information so CFPB went to court to force ACICS to comply.

▶ 85



CFPB Battles with ACICS, cont.

- ACICS maintains that CFPB has no jurisdiction over their activities since it does not evaluate any of the types of consumer financial activities at colleges that are under CFPB's jurisdiction.
- Five accreditors and CHEA filed an amicus brief supporting ACICS.
- On 2/10/2016, U.S. District Judge Richard Leon heard the case, CFPB v. ACICS, and concluded that it will take a while for him to wade through the complexity of the issues.

▶ 86



ED Begins to Exam Role of States in Institutional Requirements to Disclose Outcomes

- In keeping with ED's assessment of placement rate and graduation rate claims made by institutions, on 11/12/2015, ED sought information from state agencies related to job placement requirements.
- The Department acknowledged that it has no authority to tell state regulators how to use job placement data.

▶ 87



Role of States Highlighted in Now-Defunct Trump University

- Trump University, which is no longer in operation, highlights the role of states in regulating educational providers.
- Trump University was not accredited, did not award degrees, and did not receive federal funding.
- In 2014, a New York state judge ruled that the company operated illegally by not meeting state licensing requirements for education providers. The ruling was part of an ongoing

▶ 88



Role of States Highlighted in Now-Defunct Trump University, cont.

lawsuit brought by AG Eric Schneiderman, which alleges that the company made false and deceptive claims to students.

- Is this an education issue or a consumer protection issue?

▶ 89



Department of Education Launches Various Pilot Projects

- The Department of Education has been launching a number of pilot projects:
 - ❖ On 1/13/2015, ED named 40 institutions to experiment with competency-based education and prior learning assessment.
 - ❖ On 8/3/2015, ED launched the "Second Chance Pell Pilot" program, which would allow incarcerated Americans to receive Pell Grants to pursue a postsecondary education.
 - In 1994, Congress amended the HEA to eliminate Pell Grant eligibility for students in federal and state penal institutions.

▶ 90



Department of Education Launches Various Pilot Projects, cont.

- The pilot restores the opportunity for some with the hope that their chances to stay out of prison and become productive members of society will increase.
- Incarcerated students would be eligible for Pell Grants only for tuition, fees, books and supplies.
- See: <http://www.gpo.gov/fdsys/pkg/FR-2015-08-03/html/2015-18994.htm>

▶ 91



Department of Education Launches Various Pilot Projects, cont.

- On 10/15/2015, ED announced a new experimental site where the Secretary will waive the requirement that an ineligible entity may not provide 50% or more of a Title IV-eligible program. ED will require that an institution that provides a program that is offered by one or more non-traditional providers to be included in the institution's accreditation, but the program must be reviewed by an independent quality assurance entity that is qualified to review such programs.

▶ 92



Department of Education Launches Various Pilot Projects, cont.

- ❖ See: <http://www.ifap.ed.gov/fregisters/attachments/FR101515InvitationtoParticipateintheExperSitesInitiative.pdf>.
- On 10/30/2015, ED announced a new experiment that would allow institutions to partner with public secondary schools or local education agencies to participate in a dual enrollment experiment that will allow high school students from low-income backgrounds to take college courses through dual enrollment and will have access to Pell Grants.

▶ 93



Department of Education Launches Various Pilot Projects, cont.

- ❖ See: <http://www.ifap.ed.gov/fregisters/attachments/FR110315.pdf>.

94



Department of Education Launches Various Pilot Projects, cont.

- On 11/18/2015, ED expanded the competency-based education experiment to include the “subscription period model,” which is a set amount for a defined period of time, rather than charging by competency.

95



Program Integrity Regulations Published

- On 10/31/2015, ED published final regulations on cash management:
 - ❖ Address the proliferation of campus debit and prepaid cards offered to students, students will be able to freely choose how they will receive their Federal student aid credit balances;
 - ❖ Students must be given objective and neutral information about their financial aid disbursement options; and
 - ❖ The provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours is eliminated, effective 7/1/2016.

96



Borrower Defense to Repayment to be Regulated

- On 6/25/2015, the Department appointed a Special Master, Joseph Smith, to ensure that the former Corinthian College students receive the debt relief that they are entitled to receive while protecting tax payers. Joseph Smith will also develop a broader system to support students at other institutions who believe that they have a defense to repayment of their student loans.

97



Borrower Defense to Repayment to be Regulated, cont.

- On 10/20/2015, ED announced its plans to establish negotiated rulemaking committee to consider proposed regulations regarding borrower defenses to repayment. The committee met for 3 sessions over 3 months to address:
 - The procedures to be used for a borrower to establish a defense to repayment;
 - The criteria ED will use to identify acts of omissions of an institution that constitute defense to repayment of Direct Loans, including the establishment of a federal standard;

98



Borrower Defense to Repayment to be Regulated, cont.

- The standards and procedures that the Department will use to determine the liability of the institution for amounts based on borrower defenses;
- The effect of borrower defenses on institutional capability assessments; and
- Other loan discharges.
- A copy of the Notice is found at: <http://www.ifap.ed.gov/fregisters/attachments/FR102015.pdf>.

99



Borrower Defense to Repayment to be Regulated, cont.

- Agreement was not reached by the negotiators.
- Disagreement Over:
 - ❖ Non-federal negotiators said ED had been negotiating in bad faith by waiting until the 11th hour to explain how FFELP borrowers would be treated;
 - ❖ Proprietary representative expressed concern as to what circumstances a borrower could file a borrower defense claim and how the claim would be resolved;

▶ 100



Borrower Defense to Repayment to be Regulated, cont.

- ❖ Several negotiators had strong concerns about a proposed repayment rate calculation and disclosure; and
- ❖ Several negotiators were concerned that institutions could use mandatory arbitration clauses that forced students to forfeit their right to sue the school.
- The Department is now free to write its own regulations. The NPRM is expected this summer. The final regulations will be issued by 11/1/2016. The effective date will be 7/1/2017.

▶ 101



White House Changes FAFSA to Allow Use of Prior-Prior Year Data

- On 9/12/2015, the White House announced changes to the FAFSA to simplify the process:
 - ❖ Students will be allowed to apply for financial aid 3 months earlier, as early as 10/2016, for the 2017-2018 FAFSA.
 - ❖ Students will be able to electronically retrieve tax information filed a year earlier ("prior-prior" year) (i.e., 2015 rather than 2016 tax returns).

▶ 102



White House Changes FAFSA to Allow Use of Prior-Prior Year Data, cont.

- The announcement is found at:
- <https://www.whitehouse.gov/the-press-office/2015/09/14/fact-sheet-president%25E2%2580%2599s-plan-early-financial-aid-improving-college-choice>.

▶ 103



Emerging Emphasis on Consumer Disclosures

▶ 104



Consumer Disclosures for Students and Parents to Make Informed Choices

- Obama Administration is committed to improving college search and transparency tools in order to improve access and affordability and help students and families make better informed decisions.

▶ 105



Consumer Disclosures for Students and Parents to Make Informed Choices, cont.

- College Affordability and Transparency Center includes:
 - ❖ College Affordability and Transparency List
 - ❖ Net Price Calculator
 - ❖ College Scorecard
 - ❖ College Navigator
 - ❖ 90/10 Information
 - ❖ State Spending Charts
 - ❖ See: <http://collegecost.ed.gov>

▶ 106



Annual Rankings on the Comparative Costs of College Released

- In late 6/2015, the Department of Education released its annual list of comparative costs and ranks the highest cost institutions by sector (less-than-two, two-year, and four-year; public and private, non- and for-profit).
 - ❖ Posted on the Department’s College Affordability and Transparency Center;
 - ❖ List highlights the highest and lowest tuition and fees, highest and lowest net prices, and highest percentage increases in tuition and fees over 3 years, and average net costs.

▶ 107



Annual Rankings on the Comparative Costs of College Released, cont.

- ❖ It is located at: <http://collegecost.ed.gov/catc/>
- ❖ “Wall of Shame” meant to pressure institutions to rein in their tuition while enabling consumers to compare college based on costs; but
- ❖ Unclear whether causes decreases and unclear whether consumers ever use the list.

▶ 108



Net Price Calculator

- Under the HEA, each postsecondary institution that participates in Title IV programs is required to post a net price calculator on its website that uses institutional data to provide estimated net price information to current and prospective students and their families.
- The net price calculator should allow students to calculate an estimated net price of attendance at the institution (cost of attendance minus grant and scholarship) based on what similar students paid in a previous year.

▶ 109



Net Price Calculator, cont.

- On 1/29/2016, ED released the Net Price Calculator template for 2014-15 data. The template is found at:
<https://nces.ed.gov/ipeds/netpricecalculator/>
- Net Price:
 - The average yearly net price actually charged to a first-time, full time undergraduate student receiving student aid at the institution; and

▶ 110



Net Price Calculator, cont.

- Average net price equals COA tuition and fees, books and supplies, and room and board minus the average amount of need-based and merit-based grant.
- Net price seen as solution to “sticker price;” but average net price is like an airplane ticket, students pay different amounts. No student pays the “average.”
- 1/2015 study found Net Price Calculator may help families estimate expenses but variation in grant aid by as much as several thousand dollars due to institutional aid.

▶ 111



College Scorecard

- In 2/2013, the College Scorecard was rolled out by the Department’s College Affordability and Transparency Center after the 1/2013 State of the Union address, when President Obama announced the availability of the College Scoreboard that would be a source for prospective students to “compare schools based on a simple criteria where you can get the most bang for your educational buck.”



POWERS FYLES SUTTER & VERVILLE PC

▶ 112

New College Scorecard Released

- Initially, the tool was designed to make the search for college easier provided the following information on affordability and value and included:
 - ❖ Net price;
 - ❖ Graduation rates;
 - ❖ Loan default rates;
 - ❖ Student loan debt; and
 - ❖ Earnings potential, which was an empty briefcase.



POWERS FYLES SUTTER & VERVILLE PC

▶ 113

New College Scorecard Released, cont.

- In 8/2013, President Obama announced the Administration’s plans for combating rising college costs and making college affordable by developing a College Ratings System that would include a number of outcomes and would be linked to the allocation of financial aid;
- ED held public forums seeking input and many participants expressed concern that such a system could punish institutions serving low-income students and those that prepare students for high need, low-paying professions;



POWERS FYLES SUTTER & VERVILLE PC

▶ 114

New College Scorecard Released, cont.

- Participants warned that such a system needed to account for differences in institutional missions and student characteristics; and
- Many commented that a College Ratings System would create incentives for institutions to stop enrolling disadvantaged students who may hurt graduation rates or post-graduation earnings.

▶ 115



New College Scorecard Released, cont.

- Abandoning its College Ratings System, on 6/25/2015, ED announced that it would be releasing in late summer a consumer-driven tool that will allow students to compare college costs and outcomes.
- Based on research and discussions, ED realized that the needs of students are very diverse and the criteria used to choose a college vary widely.

▶ 116



New College Scorecard Released, cont.

- On 9/12/2015, the Department announced a new College Scorecard that has been redesigned with input from students, families and members of higher education community. Much of the data is already available on existing federal data bases:
 - ❖ Comparisons between students 6 years after first enrolling and those who entered the workforce with a high school diploma, who make average earnings of \$25,000;
 - ❖ Median Earnings of former students 10 years after entering college based on IRS data (i.e., a single number for each institution);
 - ❖ The Average Debt upon graduation;
 - ❖ Graduation Rates;

▶ 117



New College Scorecard Released, cont.

- ❖ Average Annual Cost;
- ❖ The percentage of undergraduate students who borrowed federal loans;
- ❖ The percentage of first-generation students at a given school;
- ❖ The percentage of students who repay at least a dollar of principal on their federal loans within 3 years; and
- ❖ The percentage of undergraduate students receiving Pell Grants.
- Users can type in the name of a college and the site will provide a variety of data.


POWERS FILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 118

New College Scorecard Released, cont.

- The first version excluded colleges that primarily award certificates; and
- Excludes students who did not receive federal loans or grants.
- ED also created a new technical site for researchers, which includes additional data, such as graduation rates for students who receive Pell.
- ❖ The announcement is found at:
<http://www.ed.gov/blog/comments-policy/>.


POWERS FILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 119

New College Scorecard Released, cont.

- On 3/10/2016, ED announced the release of the first interim update, adding over 700 predominately certificate-granting institutions. The announcement is found at: <http://blog.ed.gov/2016/03/know-before-you-go-updated-college-data-for-students-and-families/>
- The updated College Scorecard is found at:
<https://collegescorecard.ed.gov>


POWERS FILES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 120

Financial Aid Shopping Sheet

- On 1/19/2016, ED released an updated version of the Financial Aid Shopping Sheet, a model award letter;
- Developed jointly by ED and Consumer Financial Protection Bureau (CFPB) and first introduced in Summer 2012; and
- Required to be used for Veterans and service members eligible for the Department of Defense Tuition Assistance funds.
- Over 3,000 institutions have voluntarily adopted Shopping Sheet.

▶ 121



Financial Aid Shopping Sheet, cont.

- Gives students a standardized template that describes how much grant and loan money the student could receive so that students could easily compare financial aid packages.
- Revised template includes glossary to explain financial aid terms; and
- Includes college outcomes (i.e., graduation rate, default rate, and median borrowing).

▶ 122



Financial Aid Shopping Sheet, cont.

- The updated 2016-2017 Financial Aid Shopping Sheet is available at:
<http://www.ifap.ed.gov/eannouncements/011916FinancialAidShoppingSheet20162017.html>
- Expect to see a reauthorization proposal that would establish a standardized award notice in HEA. Senator Al Franklin (D-MN) has introduced such a bill twice.

▶ 123



Increased Number of Enforcers


POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 124

Increased Number of Enforcers

- ED program reviewers;
- Title IV Compliance auditors;
- ED recertification process and other electronic applications;
- Certification of GE programs – transition by end of 12/31/2015;
- Office of Inspector General;
- Accrediting bodies;
- State licensing agencies;


POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 125

Increased Number of Enforcers, cont.

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


POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

▶ 126

ED Discloses School Data on ED's Website

- Clery Act Reports;
- Default Rates;
- Final Program Review Determinations;
- Financial Responsibility Composite Scores;
- GE Information Rates;
- Heightened Cash Monitoring; and
- 90/10 Percentages.

The link is found at <https://studentaid.ed.gov/sa/about/data-center/school>.

▶ 127



Consumer Financial Protection Bureau (CFPB)

- Working with ED to develop Financial Aid Shopping Sheet;
- Investigating unlawful acts or practices related to advertising, marketing, or origination or private student loans; and
- Investigating whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit institutions. ACICS states that CFPB lacks jurisdiction to demand its records.
 - ❖ Case is pending before a federal judge; and
 - ❖ Six accreditors filed a friend of the court brief since any CFPB inquiry into an accreditor threatens the integrity of the accreditation process.

▶ 128



Federal Trade Commission (FTC)

- Investigating unfair advertising, marketing, or other business practices by for-profit colleges.
- On 11/1/2013, FTC issued warning to veterans to be cautious in spending their post-9/11 GI Bill benefits to attend for-profit institutions and posted "8 Questions to Ask" when selecting a college:
 - ❖ What is the total cost and how will I pay for the tuition or expenses not covered by VA benefits?

▶ 129



Federal Trade Commission (FTC), cont.

- ❖ Of the recent graduates who borrowed money, what percentage of them is delinquent on their loans?
- ❖ Will a degree from the school get me where I want to go?
- ❖ Is there pressure to enroll?
- ❖ Can I get credit for military training?
- ❖ Can I transfer credit I earn at this school to other schools?
- ❖ Is the school accredited?
- ❖ Is the school committed to helping veterans?

▶ 130



Federal Trade Commission (FTC), cont.

- ❖ The FTC warning is found at:
<http://www.consumer.ftc.gov/articles/0395-choosing-college>.
- On 11/18/2013, FTC issued revisions in the *Federal Register* to its "Vocational School Guides," which advise for-profit institutions how to avoid deceptive marketing and recruiting practices.
- ❖ In 5/1972, Guides issued, effective date 8/14/1972;

▶ 131



Federal Trade Commission (FTC), cont.

- ❖ Guides were amended effective 10/9/1998;
- ❖ On 7/30/2009, FTC sought comments on Guides and received 8 comments.
- ❖ Sole dissenter was APSCU, which recommended that the Guides be retained for unaccredited and unlicensed vocational schools only.
- Changes and comments are found in the Federal Register at:
<http://www.ftc.gov/os/fedreg/2013/11/131107vocational-schoolfrn.pdf>.

▶ 132



Department of Defense (DoD)

- Effective 9/6/2014, all educational institutions that serve service members must adhere to serve service members, all educational institutions must adhere to requirements in the DoD's Memorandum of Understanding (MOU) and be authorized to participate in the military tuition assistance (TA) program.
- ❖ The revised MOU incorporates changes based on the President's Executive Order 13607, Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, which the President signed on 4/27/2012.

▶ 133



Department of Defense (DoD), cont.

- ❖ Requirements of MOUs:
 - ▶ Require all institutions to:
 - Provide meaningful information to students about cost;
 - Not use unfair, deceptive, and abusive recruiting practices; and
 - Provide academic and student support services.
 - ▶ Implement rules to strengthen procedures for access to military installations;
 - ▶ Require DoD to conduct annual reviews;
 - ▶ Require the military departments to provide their service members a joint services transcript; and

▶ 134



Department of Defense (DoD), cont.

- ❖ Implement the DoD Postsecondary Education Complaint System for its service members.
- ❖ More information is available at: <http://www.dodmou.com>
- DoD suspended a for-profit college from the Tuition Assistance Program and later lifted suspension and placed institution on one-year probation after reviewing its recruiting practice.

▶ 135



Department of Defense (DoD), cont.

- On 1/30/2014, VA, DOD, ED, Justice, CFPB, and FTC announced launch of a new online complaint system designed to collect feedback from veterans, service members, and their families who are experiencing problems with educational institutions.
- More information is available at: <https://www.dodmou.com>

▶ 136



ED Establishes Interagency Task Force for Oversight of Proprietary Schools

- In 2015, the Department has established a task force to oversee proprietary schools consisting of representatives from:
 - ❖ Department of Education
 - ❖ Consumer Financial Protection Bureau (CFPB)
 - ❖ Securities and Exchange Commission (SEC)
 - ❖ Federal Trade Commission (FTC)
 - ❖ Internal Revenue Service (IRS)
 - ❖ Departments of Veterans Affairs, Defense, Treasury, Labor, and Justice
- Goal: To help ensure proper accountability for and oversight of career colleges.

▶ 137



ED Creates Student Aid Enforcement Unit

- On 2/8/2016, ED announced the creation of a Student Aid Enforcement Unit to respond to allegations of illegal actions by institutions, headed by Robert Kaye, formerly of the FTC. The Student Aid Enforcement Unit will include four divisions:
 - ❖ Investigations Group - to identify potential misconduct or high-risk activity among higher education institutions and protect federal funding.

▶ 138



ED Creates Student Aid Enforcement Unit, cont.

- ❖ Borrower Defense Group – to provide legal analysis, support and advice concerning claims of borrowers of Direct Loans.
- ❖ The Administrative Actions And Appeals Service Group (AAASG) – to impose administrative actions such as Emergency, Termination, Limitation, Suspension or Fine actions. This group will continue to resolve appeals by program participants from final audit and final program review determinations, initiate debarment and suspension actions, and issue school revocation and denials of re-certification.

▶ 139



ED Creates Student Aid Enforcement Unit, cont.

- ❖ Clery Group – to ensure institutions comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.
- The new unit will collaborate with partner state and federal agencies in gathering evidence against institutions of higher education that are under investigation.
- A copy of the press release is found at: <http://www.ed.gov/news/press-releases/student-aid-enforcement-unit-formed-protect-students-borrowers-taxpayers>.

▶ 140



Enterprise Complaint System Under Development

- On 3/10/2015, the White House issued the Student Aid Bill of Rights. One of the objectives was the creation of the Enterprise Complaint System by the Department by 7/1/2016.
- The purpose is to give students and borrowers a simple way to file complaints and provide feedback about lenders, servicers, collection agencies and institutions.

▶ 141



Enterprise Complaint System Under Development, cont.

- On 2/16/2016, a *Federal Register* notice published by ED sought comments on the new information collection system. See: <https://ifap.ed.gov/fregisters/attachments/FR021616.pdf>

The End

Questions?





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:
- NAASFA
- 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*, *NAASFA's Journal of Student Financial Aid*, *NAASFA'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.
