

# Federal Potpourri A View From Washington

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Presented By:

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# Obama Addresses Congress on 2/24/09

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“... And so tonight, I ask every American to commit to at least one year or more of higher education or career training. This can be a community college or a four-year school; vocational training; or an apprenticeship. But whatever the training may be, every American will need to get more than a diploma... That is why we will provide the support necessary for you to complete college and meet a brand new goal: by 2020, America will again have the highest proportion of college graduates in the world.”

# Obama Addresses US Hispanic Chamber of Congress on Education Policy Plans on 3/10/2009

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Regarding higher education, President Obama stated: “Now, the fifth part of America’s education strategy is providing every American with a quality higher education whether its college or technical training. Never has a college degree been more important. Never has it been more expensive. And at a time when so many families are bearing enormous economic burdens, the rising cost of tuition threatens to shatter dreams.

# Obama Addresses US Hispanic Chamber of Congress on Education Policy Plans on 3/10/2009, con't.

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And that is why we will simplify federal college assistance forms so it doesn't take a Ph.D. to apply for financial aid.”

Obama went on to discuss the Pell Grant increases and the American Opportunity Tax Credit.

# THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA ) (H.R. 1 )

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- Signed \$787 billion economic stimulus bill into law on 2/17/2009 (P.L. 111-5 )
- Pell Grants
  - \$500 increase
  - Maximum in FY 2009: \$5,350
  - Maximum in FY 2010: \$5,550
- Federal Work-Study
  - Additional \$200 million – overall amount not set

# THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA ) (H.R. 1 ), con't.

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## □ Tax Credits:

- \$2,500 tuition and fees credit (up from the current \$1,800) for tuition and fees and other course-related expenses (including textbooks) for up to 4 years of college;
- 40% of tax credit will be refundable (\$1,000); and
- Available to higher income taxpayers: phase-out at \$80,000 (\$160,000 for married couples filing jointly).

## □ No Perkins Loan Funding.

## □ No additional \$2,000 unsubsidized Stafford Loan.

# Secretary Duncan Calls ARRA a Historic Opportunity

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- Secretary Duncan calls ARRA “historic opportunity to create jobs and advance education reform.”
- Recovery.gov website:  
(<http://www.recovery.gov/>) created:
  - } Education (explains ARRA )
  - } Transparency (shows how, when and where ARRA money is spent ) and
  - } Submit feedback.

# McKeon Issues Letter to Secretary Duncan on Oversight of Education Spending in Stimulus Bill

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- McKeon issued letter of 2/27/2009 to Secretary Arne Duncan:
  - } Requesting information on oversight plans for education spending under ARRA;
  - } Asking the Administration to “cooperate with vigorous congressional oversight to protect both students and taxpayers”; and
  - } Asking the Secretary for regular briefings with the relevant congressional committees to explain plans for the allocating of funding to states, school districts, and institutions of higher education.



# Duncan Announces Availability of Stimulus Funds

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- On 4/1/09, Secretary Duncan announced the availability of \$44 billion of stimulus funds from ARRA:
  - } Guidelines posted at <http://www.ed.gov/recovery/>
  - } Funds for Pell Grants and FWS will be available on 7/1/2009;
  - } Keep receipts – there will be strict reporting requirements;
  - } On 4/3/09, Secretary Duncan hosted more than 150 education and community representatives for a briefing on ARRA; and

# Duncan Announces Availability of Stimulus Funds

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- } “We want to use an unprecedented investment in education to change outcomes and dramatically improve achievement.”

# Economic Stimulus Package

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## □ Winners:

- } Students from low-income families;
- } Students in community colleges and other low-cost institutions;
- } Students eligible for FWS; and
- } People seeking job training at community colleges.

# Economic Stimulus Package, con't.

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## □ Losers:

- } Students who benefit from Perkins Loans;
- } Undergraduates who want to borrow more;
- } Student loan companies; and
- } Higher education facilities.

# FY 2009 Omnibus Appropriations Act (H.R.1105) for 2009-2010

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- Includes 9 FY 2009 appropriations bills.
- House approved on 2/26/2009 by a vote of 245-178.
- Senate approved on 3/10/2009 by voice vote.
- President signed P.L. 111-8 into law 3/11/09.
- H.R. 1105 contains:
  - } Increases in maximum Pell Grant to \$5,350;
  - } FSEOG level funding -\$757,465,000 at FY 2008 level;
  - } Perkins Loans \$0; and
  - } FWS \$1,180,492,000 (includes \$200 million from

# FY 2010 Budget Blueprint Released

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- President releases \$3.55 trillion FY 2010 Budget on 2/26/09:
  - } Origination of all new loans will be in the Direct Loan Program (Obama faces opposition from both parties );
  - } Perkins Loan Program to be expanded from \$1 billion to \$6 billion;
    - Servicing would shift to the federal government
    - Allocation would be based on colleges that control costs and expand need-based aid rather than current formula
  - } \$5,550 maximum Pell Grant (2010-2011 award year );
    - Index Pell Grants to CPI plus 1% to account for inflation

# FY 2010 Budget Blueprint Released, con't.

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- } \$2,500 American Opportunity Tax Credit would be made permanent; and
- } New 5-year, \$22.5 billion Access and Completion Incentive Fund to help low-income students succeed and graduate from college.

# House and Senate Meet in Conference to Resolve FY 2010 Budget Resolutions

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## □ House Budget Resolution:

- } Contains reconciliation instructions to save \$1 billion by reforming loan program—eliminate FFELP.
- } Would make Pell Grant Program an entitlement program.

## □ Senate Budget Resolution:

- } Does not contain reconciliation instructions to save money.
- } Would not make Pell Grant Program an entitlement program, but would make FY 2010 annual Pell



# HEOA

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nactment of *Higher Education Opportunity Act*

P.L. 110-315 ) on August 14, 2008

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ315.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ315.110.pdf)

ear Colleague Letter (GEN-08-12) released on  
December 31, 2008

# Implementation of the HEOA

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## Regulations Subject to Negotiation

Notice Announcing Formation of Committees and Solicitation of Nominations to Serve as Non-Federal Negotiators on 5 Committees;

Team I – Loans-Lender-General Loan Issues

Team II – Loans-School-Based Loan Issues

Team III – Accreditation

Team IV – Discretionary Grants

Team V – General and Non-Loan  
Programmatic Issues

12/31/09

# Implementation of the HEOA, con't.

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## Regulations Subject to Negotiation

Negotiating Committees Established	02/09
Negotiations Begin	2/23/09
Negotiations End	04/09
NPRM Published in the Federal Register	08/09
Public Comment Period Ends	09/09
Final Published Regulations in the Federal Register	11/1/09

# Definition of “Distance Education” Replacing “Telecommunications”

20

- Distance education means the use of one or more technologies to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. Some types of technologies, such as the Internet, are listed in the definition.

# Definition of Diploma Mill Added

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- A Diploma Mill:
  - } Offers, for a fee, degrees, diplomas, or certificates that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training;
  - } Requires completion of little or no education or coursework to obtain the credential; and
  - } Lacks accreditation by an agency recognized by the Secretary, or a Federal agency, State government, or other organization that recognizes accrediting

# Definition of Diploma Mill Added, con't.

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- Directs the Secretary to:
  - } Maintain information and resources on the Department's website to assist students, families, and employers in understanding what a diploma mill is and how to identify and avoid them;
  - } Continue to collaborate with the US Postal Service, the FTC, the Department of Justice, the IRS, and OPM to maximize Federal efforts to prevent, identify, and prosecute diploma mills and to broadly disseminate to the public information about diploma mills and provide resources to identify diploma mills.

# Definition of Proprietary Institution of Higher Education

23

- Adds provision that definition includes an institution that provides a program leading to a BA in liberal arts which has been provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency since 10/1/2007 or earlier.
- Must be determined, pending regulations, that the program is in liberal arts subjects, the humanities disciplines, or the general curriculum.

# Ability to Benefit Definition Revised

24

- Adds provision under ability to benefit that a student may qualify after satisfactory completion of 6 credits of coursework of degree or certificate eligible coursework.
- No Title IV aid may be used to pay for 6 credits.



# College Costs

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- Objective is transparency and a bit of shame and glory.
- Measurement starting point is the average tuition and fees for first-time, full-time undergraduate students enrolled at the institution.

# College Costs, con't.

26

- Starting in July 2011, ED will make information available to the public:
  - } Information presented by category of school (4yr public, 4yr private NP, 4yr private FP, 2yr public, 2yr private NP, 2yr private FP, less than 2yr public, etc.) and
  - } List of 5% of institutions per category with highest tuition and fees for most recent academic year.

# College Costs, con't.

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- List of 5% of institutions per category with highest “net price” for most recent academic year (net price deducts average need-based and merit-based grant aid from tuition and fees via formula ).
- List of 5% of institutions per category with largest increase in tuition and fees over the three most recent academic years for which data are available (1<sup>st</sup> year used as base year ) (exempt if increase is \$599 or less ).

# College Costs, con't.

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- List of 5% of institutions per category with largest increase in net price over the three most recent academic years for which data are available (1<sup>st</sup> year used as base year) (exempt if increase is \$599 or less).
- List of 10% of institutions per category with lowest tuition and fees for most recent academic year.
- List of 10% of institutions per category with lowest “net price” for most recent academic year.

# College Costs, con't.

29

- Additional, more detailed information regarding institutions is to be published on the College Navigator site:
  - } Some information is disaggregated by income categories; and
  - } Other information discloses changes in school's tuition and fees.

# College Costs, con't.

30

- Schools in top 5% for largest increase over three year period must submit a report to ED addressing several issues including major areas of increase in school's budget and an explanation of those increases, and a description of the schools' efforts to reduce costs.
- Implementation of Net Price Calculator – to be developed by ED by August 2009; Schools must make available on their websites within two years of calculator's availability from ED.

# Textbooks

31

- Intent is to decrease costs to students and increase transparency.
- Publisher must disclose:
  - } Cost of text at college bookstore;
  - } Cost of text to public;
  - } Copyright dates of 3 prior editions;
  - } Description of content revisions;
  - } Whether available in other formats (paperback, unbound) and
  - } Provision of ISBN (International Standard Book Number).

# Textbooks, con't.

32

- Institution must include on its Internet course schedule:
  - } The International Standard Book Number (ISBN ) and retail price;
  - } If the ISBN is not available, the author, title, publisher, and copyright date; or
  - } If not practicable, the designation “To Be Determined.”



# Textbooks, con't.

33

- Institution must provide to its college bookstore:
  - } The institution's course schedule; and
  - } For each course offered, the information must include recommended textbooks and supplemental material.
- Institutions are encouraged to provide information on:
  - } Renting textbooks;
  - } Purchasing used textbooks;
  - } Textbook buy-back programs; and
  - } Alternative purchasing options.

# Textbooks, con't.

34

- Secretary may not regulate in this area.
- Effective July 1, 2010.

# Federal Database of Student Information Prohibited

35

- HEOA prohibits the development, implementation, or maintenance of a Federal database of personally identifiable information on students, including a student unit record system or an education bar code system.
- HEOA does not prohibit a State or a consortium of States from developing, implementing, or maintaining State-developed databases that track individuals over time.

# State Commitment to Affordable College Education

36

- HEOA requires from each State a maintenance of effort (MOE )for the State to receive funding under the College Access Challenge Grant Program.
- For any academic year beginning on or after 7/1 /2008, the required MOE is the amount equal to or greater than for public institutions in the State, the average amount provided for non-capital and non-direct research and development expenses or costs by the State to the public institutions during the five most recent academic years; and for a private institutions in the State, the average amount provided for financial aid for paying postsecondary education costs by the State to private institutions during the five most recent academic years.

# State Commitment to Affordable College Education, con't.

37

- Secretary may waive the MOE.

# Required Loan Disclosures

38

- Code of Conduct – Each covered institution must develop, publish, and enforce a code of conduct, which applies to the officers, employees, and agents of the institution (i.e., banning revenue arrangements with a lender, banning gifts, banning staffing assistance).
- Preferred Lender Arrangement – an arrangement between a lender and a covered institution under which the lender provides education loans (including private loans) to students attending institution.

# Master Calendar

39

- Prior to start of each award year, ED required to provide institutions with a compliance calendar which lists all HEA required reports and disclosures:
  - } Date required to be completed and submitted;
  - } Required recipients;
  - } Required method of dissemination;
  - } Description of content;
  - } References to statute, regulations, and current guidance; and
  - } Other pertinent information.

# Institutional and Financial Assistance Information for Students (Section 485 (a ) of the HEA )

40

- Previously, disclosure requirements ended at “O,” now extend to “V.”
- Includes new disclosures and requirements:
  - } Must disclose any plans the institution has for improving the academic programs;
  - } Must disclose the terms and conditions for federal loan programs;



# Institutional and Financial Assistance Information for Students, con't.

41

- } Requires institutions to develop plans to detect and prevent unauthorized distribution of copyrighted material on information technology systems, including offering alternatives to illegal-downloading or peer-to-peer distribution of intellectual property;
- } Must disclose information on student body diversity for gender and ethnicity of Pell Grant recipients;
- } Must disclose placement in employment and types of employment obtained by graduates;

# Institutional and Financial Assistance Information for Students, con't.

42

- } Must report on fire safety if have on-campus housing facilities;
- } Must disclose the retention rate of certificate-or degree-granting, full-time undergraduate students entering the institution;
- } Must disclose policies on vaccinations;

# Institutional and Financial Assistance Information for Students, con't.

43

- } Allows adjustment to the calculation of completion/graduation rates if number of students in the Armed Forces or on official church missions represent 20% or more of certificate-or degree-seeking, full-time undergraduate students –these students may be excluded;

# Institutional and Financial Assistance Information for Students, con't.

44

- } Requires institutions to disaggregate data on completion/graduation rates based on student gender, race/ethnicity, and receipt of Pell Grants; receipt of specific federal loans but non-receipt of Pell Grants; and non-receipt of Pell Grants or specific federal loans;
  - *Will not apply to 2-year degree-granting institutions until 2011-2012.*
- } Expands Entrance/Exit Counseling disclosures;
- } Adds four crimes to the list of hate crime statistics to be reported in the Campus Security Report

# Institutional and Financial Assistance Information for Students, con't.

45

- } Requires institutions to *immediately* notify the campus community in the event of a significant emergency and publish procedures to evacuate;
- } Requires institutions to disclose transfer credit policy, including any criteria used to evaluate transfer of credit earned at another institution;

# Institutional and Financial Assistance Information for Students, con't.

46

- } Requires institutions to implement procedures for managing reports of missing persons who reside in on-campus facilities and have been missing for more than 24 hours;
- } Requires institutions to provide each student, upon enrollment, with a “separate, clear, and conspicuous written notice” of the penalties associated with drug-related offenses; and

# Institutional and Financial Assistance Information for Students, con't.

47

- After being notified by the Secretary that a student has lost eligibility for financial aid due to a drug-related offense, institutions must notify the student in a “reasonable and timely manner” in a “separate, clear, and conspicuous written notice” of the loss of aid eligibility and ways to regain eligibility.

# 90/10 Rule Moved to PPA

48

- Institution has two years before losing eligibility;
- Any Title IV funds that are disbursed to student are presumed to pay for tuition, fees, and other institutional charges first, with exceptions;
- Revenue may include revenue from a non-Title IV program as long as program is approved by State, accredited, or provides an industry-recognized credential or certificate



# 90/10 Rule Moved to PPA, con't.

49

- Addresses treatment of institutional loans and grants; and
- Proceeds of Unsubsidized Loans that exceed loan limits before ECASLA on May 6<sup>th</sup> count towards 10% .

# School Cohort Default Rate Calculations Modified

50

- Beginning FY 2009, three year school cohort default rate calculation to begin;
- Schools should not feel impact until 9/2014 when cohort default rates are available for three fiscal years: FY 2009, FY 2010, and FY 2011; and
- Threshold increases from 25% to 30% .

# Year-Round Pell Grant

51

- Students may receive up to two scheduled Pell Grants during an award year.
- For receipt of any money beyond the first scheduled award, student must be enrolled at least half-time.
- Effective: 7/1/2009.

# Accreditation

52

- Congress tried to strike a balance between the responsibilities of the institutions and their accrediting agencies and the Department of Education.

# Student Achievement

53

- Congress sought to strengthen the role of accrediting agencies in assessing student achievement.
- Some sectors raised concerns about strengthening the role of accrediting agencies.
- Legislative language:
  - } Continues to require accrediting agencies to evaluate an institution's success in relation to its mission;

# Student Achievement, con't.

54

- } Continues to require accrediting agencies to consider state licensing exams, course completion and job placement, as appropriate; and
- } States that an accrediting agency may have different student achievement standards for different institutions.

# Student Achievement, con't.

55

## } Rules of Construction added:

- Nothing restricts the accrediting agency's ability to set and apply its standards to the institutions and programs it reviews;
- Institutions may develop and use their own standards on student achievement; and
- The Secretary may *not* promulgate regulations on student achievement.

# Distance Education

56

- HEOA requires accrediting agencies to make sure that institutions have processes in place to ensure that the student who enrolls in a distance education course is the same student who participates and completes the course.
- HEOA requires that an accrediting agency must have site evaluators trained to evaluate distance education offerings.



# Monitoring Growth

57

- HEOA requires an accrediting agency to have procedures to monitor the growth of programs at institutions experiencing *significant enrollment growth*.
- *Significant enrollment growth* is undefined as are the consequences.

# Due Process

58

- HEOA expands due process standards, including:
  - } Specification of clear and consistent standards;
  - } An opportunity for a written response;
  - } An opportunity to appeal any adverse action;

# Due Process, con't.

59

- } The right to representation by counsel;
- } An opportunity for institutions to put forward new evidence that relates to a financial matter; and
- } Submission to the Secretary of a summary of actions that includes the award of accreditation or reaccreditation of an institution and adverse actions (including probation).

# Transfer of Credit

60

- Institutions are required to disclose publicly their transfer of credit policies, including any criteria used for those decisions and a list of schools with which it has articulation agreements.
- Accrediting agencies are required to confirm that the institutions they review have these policies in place.
- HEOA restricts the Secretary and NACIQI's ability to require institutions to have any particular policy in place.

# Teach-Outs

61

- HEOA includes new provisions in the accreditation and PPA provisions to ensure that a teach-out plan exists when a school closes.
- The teach-out plan must be submitted for approval when:
  - } The Department notifies the accrediting agency that an institution is closing;
  - } The accrediting agency acts to withdraw, terminate or suspend an institution's accreditation; or
  - } The institution notifies the accrediting agency of its intent to close.

# Department Releases FY 2007 Draft Cohort Default Rates

62

- Draft Cohort default rate for FFELP – 7.3% .
- Draft Cohort default rate for Direct Loans – 5.3% .
- Draft Cohort default rate for both – 6.9% , compared to 5.2% for FY 2006 and 4.6% for FY 2005.

# Post-9/11 Veterans Educational Assistance Act (P.L. 110-252)

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- On June 30, 2008, President Bush signed into law (P.L. 110-252) the \$162 billion supplemental appropriations bill that provides funds to war efforts in Iraq and Afghanistan and increases veterans benefits that are available to members of the Armed Forces who commenced services after September 11, 2001.
- Guarantees educational assistance up to an amount equal to the established charges for the program of education, except that the amount payable may not exceed the maximum amount of established charges regularly charged in-State students for full-time pursuit of educational programs for undergraduate students by the public institution of higher education in the State in which the individual is enrolled that has the highest rate of established charges among all public institutions in the State.

# Post-9/11 Veterans Educational Assistance Act (P.L. 110-252 )con't.

64

- Provides a monthly housing allowance (except for programs offered through distance education ). A yearly stipend for books, supplies, equipment, and other costs in the amount of \$1,000 is also available. An individual entitled to educational assistance shall also be entitled to payment for one licensing or certification test, not to exceed the lesser of \$2,000 or the fee for the test.
- More than doubles the value of the current benefit from \$40,000 to \$90,000. The President agreed to sign the bill after a compromise was reached that would permit a service member to transfer educational benefits to a spouse or to children. The compromise legislation was designed to encourage service members to re-enlist



# Final Regulations for Post-9/11 GI Bill Published

65

- Published on March 31, 2009.
- Effective August 1, 2009.

# Technical Corrections Bill Passes Senate Veterans Affairs' Committee

66

- On July 26, 2008, the Senate Veterans Affairs' Committee passed S. 3339, the Technical Corrections Bill for the Post 9-11 GI Bill.
- Would eliminate for-profit schools from participating in the Yellow Ribbon Program of the GI Bill. The Yellow Ribbon Program allows colleges and universities to cover a portion of the tuition and fees that are in excess of the State Tuition cap in exchange for a matching contribution from the Veterans Administration.

# Filner Introduces H.R. 950

67

- Congressman Bob Filner (D-CA) Introduces H.R. 950 on 2/10/2009:
  - } Amends Post-9/11 GI Bill; and
  - } Strikes the exclusion from the payment of monthly housing allowances for those pursuing program via distance education.
- AASCU and others oppose permitting veterans a housing allowance if take courses online.

# VA Posts Final Tuition and Fees List

68

- VA Posts Final, State-by-State List of Tuition and Fees Payable to Veterans under Post-9/11 GI Bill:
  - } Maximum In-State Tuition and Fees Payable List found at:  
[http://www.gibill.va.gov/GI\\_Bill\\_Info/CH33/Tuition\\_and\\_fees.htm](http://www.gibill.va.gov/GI_Bill_Info/CH33/Tuition_and_fees.htm)
  - } Figures are highest costs for public institution in state.

# Questions ??

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## *Practice Areas:*

- Education
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- NASFAA
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- Ph.D., University of Maryland, 1976
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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.

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