

# Federal Potpourri

Presented at the  
NASASPS  
2012 Annual Conference

Sharon H. Bob, Ph.D.  
Powers Pyles Sutter & Verville, PC

April 24, 2012



1

---

---

---

---

---

---

---

---

## Congressional Hearings and GAO/IG Reports

POWERS  
PYLES  
SUTTER &  
VERVILLE, PC

2

---

---

---

---

---

---

---

---

### House and Senate Education Committee Hold Hearings on For-Profit Colleges

- On 6/17/2010, Former Chair of House Education and Labor Committee George Miller (D-CA) holds hearing on how accrediting agencies evaluate awarding of academic credit and program length.
- Beginning 6/24/2010 to the present, Senate HELP Committee Chair Tom Harkin (D-IA) holds series of hearings on for-profit colleges looking at tremendous growth from 50,000 in 1998 to 1.8 million in 2008; "Raking in record profits" despite "dismal student outcomes."

POWERS  
PYLES  
SUTTER &  
VERVILLE, PC

3

---

---

---

---

---

---

---

---

**House and Senate Education Committee Hold Hearings on For-Profit Colleges, cont.**

- Beginning 6/30/2010, Majority Whip Senator Richard Durban (D-IL) holds forums about for-profit colleges recommending:
  - Tightening up of 90/10 rule;
  - Examining use of federal dollars for marketing;
  - Acquiring accreditation by purchasing nonprofit colleges; and
  - Oversight of private education loans.
- On 8/4/2010 and 11/30/2010, GAO released results of undercover investigation of for-profit schools, which found that for-profit schools:
  - Encouraged fraudulent practices;

---

---

---

---

---

---

---

---

**House and Senate Education Committee Hold Hearings on For-Profit Colleges, cont.**

- Exaggerated potential salaries;
- Provided unclear information about program duration and graduation;
- Pressed applicants to sign enrollment agreement before seeing GAO; and
- Repeated calls to prospective students following website inquiries.

---

---

---

---

---

---

---

---

**Secretary Duncan Responds to Harkin with Plans to Strengthen Oversight**

- On 8/13/2010, Secretary Arne Duncan sent a letter to Senator Harkin with plans to strengthen oversight:
  - ED will conduct 50% more program reviews each year;
  - ED hired more than 60 additional staff to conduct program reviews; and
  - ED sent letter to all college presidents reminding them of the consequences of fraudulent or deceptive recruitment, admissions and financial aid activities.

---

---

---

---

---

---

---

---

**House Committee on Education and the Workforce and Subcommittee on Higher Education Hold Hearings**

- Beginning 3/11/2011, House Committee on Education Chair John Kline (R-MN) and House Subcommittee Chair Virginia Foxx (R-NC) have been holding hearings examining administrative burden of federal regulations, specifically on the impact of the state authorization and the definition of credit hour regulations.

---

---

---

---

---

---

---

---

**House Committee on Education and the Workforce and Subcommittee on Higher Education Hold Hearings, cont.**

- On 3/17/2011 and 7/8/2011, Chair Kline and Chair Foxx held hearings on the gainful employment rules indicating that the rules were “anti-student,” “anti-employer,” and they limited job growth and student choice.
- On 2/28/2012, the House passed the *Protecting Academic Freedom in Higher Education Act* (H.R. 2177), by a vote of 303 to 114, which would repeal the federal definition of credit hour and the requirement to comply with state authorization laws in every state in which they operate.

---

---

---

---

---

---

---

---

**House Committee on Education and the Workforce and Subcommittee on Higher Education Hold Hearings, cont.**

- Senator Richard Burr (R-NC) introduced S. 1297, companion legislation.
- Prognosis: The bill will likely go nowhere and President Obama will not sign bill.

---

---

---

---

---

---

---

---

**Senate and House Hold Hearings on Military Assistance for Attending For-Profit Colleges**

- On 8/4/2010, Senators Dick Durbin (D-IL) and James Webb (D-VA) asked the Secretaries of VA and Defense for detailed information on how military tuition assistance program and Post-9/11 GI Benefits are being spent since 40% of \$580 million went to for-profit colleges in 2009-2010.
- A series of hearings were held in the House and Senate on the growth of revenues from military assistance at for-profit colleges, which raised questions:

---

---

---

---

---

---

---

---

**Senate and House Hold Hearings on Military Assistance for Attending For-Profit Colleges, cont.**

- Problems were noted with for-profit colleges in terms of quality, student employability, and aggressive marketing; and
- Recommendations were made that military assistance should count towards the 90% and not the 10% in the 90/10 rule.

---

---

---

---

---

---

---

---

**Joint Press Conference on Plans to Introduce Legislative Proposals Applicable to the Proprietary Sector; Senate Committee Hearing Chaired by Senator Webb Followed**

- On 9/22/2011, Senators Tom Harkin (D-IA), Tom Carper (D-DE) and Jim Webb (D-VA) held a press conference where a report titled "New Data on Post-9/11 GI Bill Benefits Show Disproportionate Share of Taxpayer Dollars Going to For-Profit Colleges with Concerning Outcomes" was released. Some key findings include:
  - A disproportionate share of Post-GI Bill dollars is being paid to for-profit schools. Eight of the ten biggest recipients of Post-9/11 GI Bill funds are for for-profit companies. Only two public state university systems were among the Top-10.

---

---

---

---

---

---

---

---

**Joint Press Conference on Plans to Introduce Legislative Proposals Applicable to the Proprietary Sector; Senate Committee Hearing Chaired by Senator Webb Followed, cont.**

- Some for-profit schools are a risky investment for veterans and taxpayers since their data shows that almost 60 percent of the students who withdrew from the eight for-profit college companies withdrew within the first year.
- The high cost of for-profit colleges may not provide good value. The data show that for-profit schools collected more than one-third of the GI Bill funds, but trained only 25 percent of veterans as opposed to public colleges and universities having received 40 percent of the benefits and trained 59 percent of the veterans.

---

---

---

---

---

---

---

---

**New Data Reveals For-Profit Colleges Take Bulk of DoD TA Money**

- On 2/23/2012, Senator Tom Harkin (D-IA) released new Department of Defense data showing that for-profit colleges received half of all military Tuition Assistance (TA) dollars or \$280 million out of \$563 million spent last year for active duty military servicemembers.
  - 6 of the top 10 TA recipients are for-profit colleges and the 6 receive 41% of all TA dollars.
  - A HELP Committee analysis of student outcomes at 4 of the 6 shows that 60% of students dropped out in first year.

---

---

---

---

---

---

---

---

**New Data Reveals For-Profit Colleges Take Bulk of DoD TA Money, cont.**

- The analysis follows last year's announcement that the top 10 recipients of Post-9/11 GI Bill benefits included 8 for-profit companies. The 8 companies collected \$626 million last year.

---

---

---

---

---

---

---

---

## 14 Senators Want GI Bill to be Trademarked

- On 3/2/2012, Senate Barbara Boxer (D-CA), Co-Chair of the Senate Military Family Caucus, and 13 other Democratic Senators asked the VA to trademark the name "GI Bill" to prevent for-profit colleges from using the phrase to recruit veterans.

---

---

---

---

---

---

---

---

## Senate and House Bills Call for Modifying 90/10 Rule

- Bills to count VA Benefits in 90/10:
  - On 12/21/2011, Congresswoman Maxine Waters (D-CA) introduced H.R. 3764, which would count veterans' education benefits in 90/10; and
  - On 11/16/2011, Congressman Mike Quigley (D-IL) introduced H.R. 3447, The Veterans' Education Protection Act, which would include veterans' education benefits in 90/10.

---

---

---

---

---

---

---

---

## Senate and House Bills Call for Modifying 90/10 Rule, cont.

- On 1/23/2012, Senator Durbin and Senator Tom Harkin (D-IA) introduced S. 2032, the *Protecting Our Students (Post) Act*, proposing to amend the *Higher Education Act* to restore the 90/10 rule to the original 85/15 rule. Specifically, S. 2032 would:
  - Re-establish the 85/15 metric and require all "federal funds" (including Post-9/11 GI bill benefits, Department of Defense Tuition Assistance, and Workforce Investment Act (WIA) funding);

---

---

---

---

---

---

---

---

## Senate and House Bills Call for Modifying 90/10 Rule, cont.

- Require schools to lose Title IV eligibility after only one year of non-compliance with the 85/15 rule;
- Require scholarship money to be in the form of monetary aid to count as revenue;
- Require scholarship money to come from an outside source with no affiliation to the institution; and
- Exclude institutional loans, except for payments made by students on such loans, from the definition of "revenue."

---

---

---

---

---

---

---

---

## Senate and House Bills Call for Modifying 90/10 Rule, cont.

- On 2/16/2012, Senator Tom Carper (D-DE) introduced S. 2116 and Congresswoman Jackie Speier (D-CA) introduced H.R. 4055 that modifies 90/10 rule:
  - Place revenue from the Department of Defense and VA education programs in the 90 percent of the 90/10 calculation;
  - Retain current law: If a school is out of compliance with the 90/10 rule for two consecutive years, the school would lose its eligibility for ED funding as well as Department of Defense funding and VA education benefits; and

---

---

---

---

---

---

---

---

## Senate and House Bills Call for Modifying 90/10 Rule, cont.

- Schools would regain eligibility once they take a series of steps toward compliances, as mandated by law.

---

---

---

---

---

---

---

---

**Webb Introduces Bipartisan Bill to Preserve Post-9/11 GI Bill by Requiring More Counseling**

- On 3/8/2012, Senators James Webb (D-VA), Tom Harkin (D-IA), Tom Carper (D-DE), Claire McCaskill (D-MO) and Scott Brown (R-MA) introduced the *Military and Veterans' Educational Reform Act of 2012 (S. 2179)*:
  - Require all institutions eligible for Post-9/11 GI Bill and TA funding be "Title IV" eligible;
  - Require state approving agencies to conduct outreach activities to veterans and service members;

---

---

---

---

---

---

---

---

**Webb Introduces Bipartisan Bill to Preserve Post-9/11 GI Bill by Requiring More Counseling, cont.**

- Require VA and DoD to develop centralized complaints process to report misrepresentation, fraud, waste and abuse;
- Require VA and DoD to conduct compliance reviews of educational institutions whenever certain quality measures are triggered;
- Increase the transparency of educational institutions by requiring them to disclose graduation rates, default rates, and other critical information; and
- Increase interagency coordination by requiring the Department of VA, DoD and ED to share information.

---

---

---

---

---

---

---

---

**Lautenberg Introduces Bipartisan Legislation Aimed at Providing Counseling Services for Veterans**

- On 3/20/2012, Senator Frank Lautenberg (D-NJ) and 5 other Senators introduced the *GI Educational Freedom Act of 2012* aimed at providing every veteran who receives VA benefits to receive counseling services.
- Congressman Gus Bilirakis (R-FL), introduced a similar bill, *Improving Transparency of Educational Opportunities for Veterans' Act of 2012*, calling for improved outreach and transparency to veterans and service members.

---

---

---

---

---

---

---

---



**Lautenberg Introduces Bipartisan Legislation Aimed at Providing Counseling Services for Veterans, cont.**

- On 3/27/2012, Senator Patty Murray (D-WA) introduced the *GI Bill Consumer Awareness of 2012*, which would give servicemembers and veterans access to information that would help them make informed decisions about schools. The VA and DoD would be required to develop a joint policy to end aggressive marketing.

---

---

---

---

---

---

---

---

**OIG Releases Report Warning FSA of Fraud Vulnerability in Distance Education Programs**

- On 9/26/2011, the Office of Inspector General (OIG) released a report titled, "Investigative Program Advisory Report: Distance Education Fraud Rings," alerting Federal Student Aid (FSA) of the serious fraud vulnerability in distance education programs and to make recommendations which would mitigate future risks of fraud in the Title IV programs.

---

---

---

---

---

---

---

---

**OIG Releases Report Warning FSA of Fraud Vulnerability in Distance Education Programs, cont.**

- Since the introduction of the Internet to higher education and statutory changes that removed the restrictions on the eligibility of distance education programs have led to an increase in the number of education programs offered solely online and the number of students receiving Title IV funds. NCES found that the volume of students who took distance education courses increased from 8.2 percent in 1999-2000 to 20.4 percent in 2007-2008.

---

---

---

---

---

---

---

---

**OIG Releases Report Warning FSA of Fraud Vulnerability in Distance Education Programs, cont.**

- The OIG report indicated that fraud rings have taken advantage of the expansion of distance education courses and programs to commit fraud against the Title IV programs and the higher education community. In 2005, OIG had opened 16 distance education fraud ring investigations and, as of August 11, 2011, OIG had opened 100 investigations.
- OIG recommended that ED should require schools to:
  - Verify the identity and regular student status of those enrolled in distance education programs;
  - Reduce the cost of attendance for Title IV awards to these students; and
  - Ensure that ineligible incarcerated persons not obtain Title IV awards.

---

---

---

---

---

---

---

---

**ED Issues DCL on Fraud and Distance Education (GEN-11-17) – 10/20/2011**

- DCL provides guidance and action to address potential fraud in Federal student aid programs at:  
<http://ifap.ed.gov/dpccletters/GEN1117.html>
- ED recommends delaying disbursement of Title IV until the student has participated in the distance education program for a longer and more substantiated period of time;
- ED recommends making more frequent disbursements of Title IV so that all of the money is not disbursed up front; and

---

---

---

---

---

---

---

---

**ED Issues DCL on Fraud and Distance Education (GEN-11-17) – 10/20/2011, cont.**

- ED reminds institutions that they are required to have procedures to validate a fraudulent claim of high school completion.
- Institutions are required to have a mechanism to ensure that the student who receives course credits is the same student who took course to be reviewed by accrediting agency.
- 9/26/2011, OIG issued report on “Distance Education Fraud Rings” at:

<http://www2.ed.gov/about/offices/list/oig/invtrep/orts/l42i0001.pdf>

---

---

---

---

---

---

---

---

## Student Loan Default Rates Released for FY 2009

	FY 2008	FY 2009
National Rate	7%	8.8%
Public Institutions	6%	7.2%
Private Non-Profit Institutions	4%	4.6%
For-Profit Institutions	11.6%	15%

---

---

---

---

---

---

---

---

## Education Department Releases Draft Two-Year and Three-Year Cohort Default Rates

- On 2/27/2012, ED issued draft FY 2010 Two-Year Cohort Default Rates; and
- On 3/5/2012, ED issued draft FY 2009 Three-Year Cohort Default Rates.
- Sanctions on Three-Year Cohort Default Rates begin in 2014 (FY 2009, FY 2010, and FY 2011).
- **WARNING:** It is critical that institutions review the data in draft CDRs or cannot contest accuracy in official CDRs.

---

---

---

---

---

---

---

---

## More to Come!

- On 6/30/2011, ED released first annual College Affordability and Transparency Lists. See <http://collegecost.ed.gov>
- In 1/2012, ED released new template for Net Price Calculator found at: <http://nces.ed.gov/ipeds/netpricecalculator/>

---

---

---

---

---

---

---

---

**Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10) Signed into Law - 4/15/2011**

- Permanently repeals Year-Round Pell for 2011-2012 award year (only effective 2009-2010 and 2010-2011);
- 2010-2011 last award year for ACG and National SMART Grant Programs;
- Eliminates funding for LEAP; and
- SEOG reduced.

---

---

---

---

---

---

---

---

**Budget Control Act of 2011 (P.L. 112-25) Signed into Law – 8/2/2011**

- Effective for loans made for periods of enrollment beginning on or after 7/1/2012, graduate and professional students no longer eligible for Federal Direct Subsidized Loans;
- Termination of Direct Loan Borrower Repayment Incentives effective for loans disbursed (first disbursement date) on or after 7/1/2012, except interest rate reductions for payments automatically electronically debited from a bank account; and
- Annual Pell Grant maximum preserved at \$5,550 for 2012-2013.
- Bi-partisan “Super Committee” established to reduce federal deficit – Group failed to reduce \$1.2 trillion federal deficit.

---

---

---

---

---

---

---

---

**Omnibus FY 2012 Appropriations Bill (P.L. 112-74) Signed into Law – 12/16/2011 – See DCL GEN-12-01**

- Annual Pell Grant maximum remains at \$5,550 for 2012-2013 (P-12-01);
- No Pell Grant if amount determined to be less than 10% of maximum award;
- Maximum period for Pell Grants reduced from 18 to 12 semesters for all students beginning 2012-2013 not just first-time Pell Grant recipients (no one grandfathered in);
- AGI to qualify for automatic zero: EFC reduced from \$30,000 to \$23,000 for 2012-2013;
- Grace period interest subsidy on new Subsidized Loans made between 7/1/2012 and 6/30/2014 eliminated; and

---

---

---

---

---

---

---

---

**Omnibus FY 2012 Appropriations Bill  
(P.L. 112-74) Signed into Law –  
12/16/2011 – See DCL GEN-12-01, cont.**

- Title IV eligibility for ATB students eliminated for students who **first enroll** in a program on or after 7/1/2012. (Neither ATB testing nor earning 6 credits applicable to a degree or certificate will count.) The law makes an exception for those who completed secondary school in a home school setting that is treated as a home school under State law.

---

---

---

---

---

---

---

---

**Interest Rate on Subsidized  
Loans to Increase to 6.8%**

- For new subsidized loans for undergraduates first disbursed on or after 7/1/2012, the interest rate will be a fixed rate of 6.8%.
- Under *College Cost Reduction and Access Act (CCRAA)*, signed into law on 9/27/2007, the interest rate on subsidized loans for undergraduates was reduced over time from 6.8% to 3.4%.

---

---

---

---

---

---

---

---

**President Announces Two New Student  
Loan Programs to Help Students Manage  
Debt**

- On 10/26/2011, President Obama announced two loan initiatives:
- “Pay as You Earn” Repayment Plan – provides for an acceleration of the Income-Based Repayment Plan enacted under SAFRA that would have taken effect on or after 7/1/2014 but will go into effect in 2012, which provides for a:
  - Lower income-based payment (10% of discretionary income rather than 15%); and
  - Shorter time until full forgiveness takes place (20 years rather than 25 years).

---

---

---

---

---

---

---

---

**President Announces Two New Student Loan Programs to Help Students Manage Debt, cont.**

- “Special Direct Consolidation Loan Program – Beginning 1/17/2012 to 6/30/2012, borrowers would receive 0.25% interest rate reduction on their consolidated FFEL loans and additional 0.25% interest rate reduction on entire consolidated FFEL and DL.
- An electronic announcement is at: <http://ifap.ed.gov/eannouncements/102611SpecialDCLInfoInitial.html>.

---

---

---

---

---

---

---

---

**President Releases FY 2013 Budget Blueprint on 2/13/2012**

- Increasing the annual Pell Grant award to \$5,635 through the 2014-2015 award year;
- Maintaining interest rate of 3.4 percent on Subsidized Stafford student loans for one year. (If not maintained legislatively, the interest rate on Subsidized Stafford student loans will increase to 6.8 percent on July 1, 2012.);
- Doubling the number of federal work-study jobs over the next five years;

---

---

---

---

---

---

---

---

**President Releases FY 2013 Budget Blueprint on 2/13/2012, cont.**

- Reforming federal campus-based aid programs to shift aid away from colleges that fail to keep net tuition down, and toward those colleges and universities that do their fair share to keep tuition affordable by providing “responsible” tuition, providing “good value” in education, and ensuring that higher numbers of lower income students complete their education. (No details were provided as to how the aid would be distributed.);

---

---

---

---

---

---

---

---

## **President Releases FY 2013 Budget Blueprint on 2/13/2012, cont.**

- Permanently extending the American Opportunity Tax Credit (AOTC), a partially refundable tax credit worth up to \$10,000 per student over four years of college;
- Creating a \$1 billion "Race to the Top" program for postsecondary education, which would provide an incentive to states to revamp state financing of higher education;

---

---

---

---

---

---

---

---

## **President Releases FY 2013 Budget Blueprint on 2/13/2012, cont.**

- Reforming and increasing the size of the Perkins Loan program from \$1 billion to \$8.5 billion a year. The reform would include making the program unsubsidized and increasing the interest rate to 6.8 percent;
- Creating a new \$55 million initiative to increase college access and completion and improve educational productivity through an evidence-based grant competition, with up to \$30 million going directly to minority-serving institutions;

---

---

---

---

---

---

---

---

## **President Releases FY 2013 Budget Blueprint on 2/13/2012, cont.**

- Funding a new initiative to improve access to job training across the nation to support State and community college partnerships with businesses to build the skills of American workers to give them the skills employers explicitly need; and
- Overhauling the TEACH Grant program by providing \$190 million in mandatory funding for the new Presidential Teaching Fellows program.
- Prognosis: Dead on Arrival!

---

---

---

---

---

---

---

---

## House Passes “Path to Prosperity” Budget Resolution on 3/29/2012

- The House passed Paul Ryan’s “Path to Prosperity” budget resolution by a vote of 228-191 that would:
  - Eliminate the in-school interest subsidy for undergraduates;
  - Eliminate Pell Grant eligibility for less-than-half-time students;
  - Eliminate ACA; and
  - Allow interest rates to double on 7/1/2012 to 6.8%.
- Prognosis: Senate Democrats will not pass the bill.

---

---

---

---

---

---

---

---

## ED Works with Consumer Financial Protection Bureau (CFPB)

- ED and CFPB are launching a new “Know Before You Owe” Project aimed at creating a model financial aid disclosure form, the Financial Aid Shopping Sheet, schools will use to help students understand the types and amounts of aid they qualify for and can compare packages across institutions.
- The form is available at:  
<http://www.consumerfinance.gov/students/knowbeforeyouowe/>

---

---

---

---

---

---

---

---

## ED Works with Consumer Financial Protection Bureau (CFPB), cont.

- Students and families are seeking 3 data points, which do not appear on award letters:
  - Estimated debt at graduation;
  - Estimated monthly payment; and
  - Projected ability to pay.

---

---

---

---

---

---

---

---



### **ED Works with Consumer Financial Protection Bureau (CFPB), cont.**

- On 11/17/2011, CFPB and ED published a joint notice in the *Federal Register* requesting information on Private Education Loans and Private Education Lenders to prepare a future report to Congress on private education loans and lenders. Report to be issued Summer 2012.
- A more informal request is available at: [www.consumerfinance.gov](http://www.consumerfinance.gov).
- On 1/12/2012, CFPB Director, Richard Cordray, compared the practices of some parts of the student loan business to the subprime mortgage lending practices.

---

---

---

---

---

---

---

---

### **ED Works with Consumer Financial Protection Bureau (CFPB), cont.**

- On 3/5/2012, CFPB began accepting complaints about student loans:
  - Billing questions;
  - Confusing advertising; and
  - Collection practices by private student lenders.
- Private student ombudsmen, Rohit Chopra, is responsible for examining complaints.
- CFPB will forward federal student loan complaints to ED.

---

---

---

---

---

---

---

---

### **DOD Requires Institutions Participating in Military Tuition Assistance to Have a MOU with DOD**

- A signed MOU was to be sent to DOD to be on the "List of Participating Institutions" by 1/1/2012, but delayed until Summer 2012.
- Delay made at request of 52 Senators and members of the higher education community because MOU provisions inconsistent with "well-established academic policies:"
  - Academic credit;
  - In-school residency;
  - Tuition policies; and
  - Payment processing.

---

---

---

---

---

---

---

---

### **DOD Requires Institutions Participating in Military Tuition Assistance to Have a MOU with DOD, cont.**

- New guidelines for recruiting servicemembers will include:
  - Prior to enrollment, school will disclose policies regarding admissions, transfer credit and costs;
  - Prior to enrollment, schools will provide access to FAA; and
  - Schools will ban aggressive marketing and inducements.
- See [www.dodmou.com](http://www.dodmou.com)

---

---

---

---

---

---

---

---

### **Getting Ready for Reauthorization**

- On 2/17/2012, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) issued a Notice regarding NACIQI's draft report on reauthorization. The report reflects the results of its consideration of testimony from various stakeholders.
- NACIQI concluded that the accreditation system serves as a "critical element" in providing information about academic quality to satisfy the federal interest in assuming the appropriate use of federal funds.
- The report offers specific recommendations to strengthen the role of accreditation, the state role, and the federal role in the oversight of higher education institutions.

---

---

---

---

---

---

---

---

### **Getting Ready for Reauthorization, cont.**

- Accrediting agencies should focus on value, standards, outcomes, cost, transparency and accountability;
- States are inconsistent particularly in the area of state consumer protection and accountability and should strive for consistency; and
- The federal government should determine what mechanisms ensure quality and better communication and collaboration among the TRIAD.
- The report is found at: <http://www2.ed.gov/about/bdscomm/list/naciqi.html>

---

---

---

---

---

---

---

---

# Program Integrity Regulations

---

---

---

---

---

---

---

---

## APSCU Litigation

- APSCU challenged final Gainful Employment rule in federal district court:
  - Ruling expected by 6/30/2012.
- State Authorization/Incentive Compensation/Misrepresentation Rules:
  - Ruling appealed and in D.C. district court.
  - Ruling expected by the end of 2012.

---

---

---

---

---

---

---

---

## Credit Hour

§§600.2, 602.24, 603.24, and 668.8  
(DCL GEN-11-06)

---

---

---

---

---

---

---

---

## Why Establish a Credit Hour Definition?

- There was no definition;
- Establishes consistent measure of eligibility for Federal funding; and
- Final Rules: Provides that a credit hour is an institutionally established equivalency of amount of work that reasonably approximates not less than the measures in the definition for **federal funding purposes**.

---

---

---

---

---

---

---

---

## Definition of Credit Hour

- Credit hour is defined as an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates:
  - One hour of classroom or direct faculty instruction and a minimum of *two hours of out of class student work each week for approximately 15 weeks for one semester or trimester of credit, or 10 to 12 weeks for one quarter credit, or equivalent amount of work over a different amount of time*; or

---

---

---

---

---

---

---

---

## Definition of Credit Hour, cont.

- Credit hour is defined as follows (cont.):
  - At least an equivalent amount of work as required in the first paragraph for other academic activities including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

---

---

---

---

---

---

---

---

## Clock-Hour Programs

- The regulations require certain credit-hour programs to be considered clock-hour programs for Title IV purposes if:
  - The program is required to *measure student progress* in clock hours when receiving federal or state approval or licensure to offer the program; or
  - The program is required to *measure student progress* in clock hours when completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue; or
  - The credit hours awarded are not in compliance with the proposed definition found in 34 CFR 600.2. <sup>61</sup>

---

---

---

---

---

---

---

---

## Clock-to-Credit-Hour Conversion

- Required for non-degree programs at any type of institution if each course in non-degree program does not transfer into at least a 2-year degree program; have enrolled students; and graduates.
- Except in certain cases discussed below, the method of converting clock hours to credit hours is modified using 900 clock hours as the minimum. *Therefore, a semester hour will be based on 37.5 clock hours and a quarter hour will be based on 25 clock hours.* <sup>62</sup>

---

---

---

---

---

---

---

---

## Clock-to-Credit-Hour Conversion, cont.

- *The institution's conversions to establish a minimum number of clock hours of instruction per credit hour may be less than 37.5 or 25 clock hours if, for participation in Title IV programs, neither the accrediting agency nor the state agency has identified deficiencies with the institution's policies and procedures or its implementation for determining credit hours as defined in 34 CFR 600.2 so long as:*
  - The institution's students' work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in the conversion formula; and: <sup>63</sup>

---

---

---

---

---

---

---

---

## Clock-to-Credit-Hour Conversion, cont.

- A semester or a trimester hour must include at least 30 clock hours of instruction; and
- A quarter hour must include at least 20 clock hours of instruction.

---

---

---

---

---

---

---

---

## Responsibilities of an Accrediting Agency

- The responsibilities of an accrediting agency are to conduct an effective review and evaluation of an institution's policies and procedures for the assignment of credit hours and the institution's application of its policies and procedures in assigning credits. The accrediting agency meets the requirement if it reviews each institution's:
  - Policies and procedures for determining credit hours that the institution awards for courses and programs;
  - Application of the institution's policies and procedures to its courses and programs;

---

---

---

---

---

---

---

---

## Responsibilities of an Accrediting Agency, cont.

- Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education;
- The accrediting agency may make use of sampling or other methods in the evaluation;
- The accrediting agency must take appropriate actions to address any deficiencies;
- If an agency finds systemic noncompliance, the agency must promptly notify ED; and
- Accreditation reviews occur for initial or renewal of accreditation; however, during the interim, an institution is held responsible and accountable for meeting definition.

---

---

---

---

---

---

---

---

## ED Guidance on Clock-Credit Hour Conversion

- Per page 66856 of the Preamble of the 10/29/2010 final regulations, institution must require students to complete clock hours that are the basis for the credit hours awarded when an institution converts to credit hours. Programs must contain clock hours that support the conversion. Institutions may permit excused absences.
  - ED recommends that institutions not provide grades until underlying clock hours are complete.

---

---

---

---

---

---

---

---

## ED Guidance on Clock-Credit Hour Conversion, cont.

- New courses may be started but clock hours under new courses may not count toward completion of the previous courses.
- If a state agency provides a clock-to-credit-hour conversion formula in their statutes and regulations that did not address outside preparation, then the programs regulated by the agency must be offered in clock hours.
- ED is examining various state laws and plans to call the state agencies to determine whether outside preparation is used to determine what constitutes a credit hour.

---

---

---

---

---

---

---

---

## ED Guidance on Clock-Credit Hour Conversion, cont.

- ED plans to issue DCL to address these various clock and credit hour issues.

---

---

---

---

---

---

---

---

**High School Diploma**  
§668.16(p)

POWERS  
PYLES  
SUTTER &  
VERVILLE, PC

70

---

---

---

---

---

---

---

---

**High School Diploma**

- Why add this high school diploma requirement?
  - To ensure that students who receive Title IV, HEA program funds have valid high school diplomas; and
  - To address recommendations made in the 8/17/2009 GAO report.

POWERS  
PYLES  
SUTTER &  
VERVILLE, PC

71

---

---

---

---

---

---

---

---

**High School Diploma, cont.**

- New requirement for institutions to develop and follow procedures to evaluate a student's high school completion if:
  - The institution or the Secretary has reason to believe the high school diploma was not obtained from an entity that provides secondary school education.

POWERS  
PYLES  
SUTTER &  
VERVILLE, PC

72

---

---

---

---

---

---

---

---



## High School Diploma, cont.

- New requirement created confusion which ED responded to in preamble:
  - This is not a requirement to collect high school diplomas;
  - There is no ED master list;
  - This does not apply to home-schooled students.

---

---

---

---

---

---

---

---

## High School Diploma, cont.

- Beginning with the 2011-2012 FAFSA:
  - Limited collection via FAFSA on the Web for first-time filers:
    - Applicant will be asked to specify high school name and city/state; and
    - Applicant will be asked to select from drop-down list or write-in;
  - Populated by NCES lists (does not mean high school is approved or not approved)

---

---

---

---

---

---

---

---

## High School Diploma, cont.

- If high school does not appear on NCES lists, documentation may include:
  - High school diploma; and
  - Final transcript showing the courses the student completed;
- Student-certification is not sufficient;
- There is no appeal process in regulations; and
- The school may use alternatives to high school diploma, like ATB testing or 6 credits/225 clock hours.
- Guidance will be provided in FSA Handbook.

---

---

---

---

---

---

---

---

# Misrepresentation

Subpart F of Part 668  
(DCL GEN-11-05)

---

---

---

---

---

---

---

---

## Why Revise the Misrepresentation Provisions?

- Regulations last revised over 20 years ago;
- Complaints from students who allege they were victims of false promises;
- GAO undercover audit; and
- To strengthen the Department's regulatory enforcement authority.

---

---

---

---

---

---

---

---

## What do the Misrepresentation Regulations Describe?

- The actions the Department may take if it determines that an institution has engaged in substantial misrepresentation;
- The types of activities that constitute substantial misrepresentation;
- Provide that an eligible institution is deemed to engage in substantial misrepresentation if the institution, one of its representatives, or an entity under contract with the institution for providing educational programs or marketing, advertising, recruiting, or admissions activities makes a substantial misrepresentation regarding the eligible institution; and

---

---

---

---

---

---

---

---

## What do the Misrepresentation Regulations Describe? cont.

- Clarify that substantial misrepresentation is prohibited in all forms.

---

---

---

---

---

---

---

---

## Definition of Misrepresentation

- Any false, erroneous, or misleading statement made by the institution directly or indirectly to a student, prospective student, member of the public, accrediting agency, state agency, or to the Department of Education.

---

---

---

---

---

---

---

---

## Definition of Misleading Statement

- Includes any statement that has the likelihood or tendency to deceive or confuse. Statement is any communication made in writing, visually, orally, or through other means; and
- Includes student testimonials given under duress or because such testimonial was required to participate.

---

---

---

---

---

---

---

---

## Definition of Substantial Misrepresentation

- Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to

- False, erroneous or misleading statements about nature of educational program (§668.72):
  - The particular type of institutional or programmatic accreditation;
  - Whether student can transfer credits to another institution;
  - Conditions under which the institution will accept transfer credits;
  - Whether completion of program qualifies student to take exam as precondition of employment or for acceptance into labor union;

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to, cont.

- Whether its courses are recommended by unsolicited testimonials or endorsements;
- The size, location, facilities, or equipment;
- Requirements for successful completion or termination from program;
- Nature, age and availability of equipment;
- Whether the program has been authorized by the State;
- The nature or extent of any prerequisites; or
- Any matters required for disclosures.

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to, cont.

- False, erroneous or misleading statements about nature of financial charges (§668.73):
  - Offers of scholarships to pay charges;
  - Whether a particular charge is customary;
  - The cost of the program and the refund policy;
  - The availability or nature of any financial assistance; or
  - The student's right to reject any particular type of financial aid.

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to, cont.

- False, erroneous or misleading statements about employability of graduates (§668.74)
  - The institution's relationship with an employment agency;
  - The institution's plans to maintain a placement service for graduates;
  - The institution's knowledge about the employment conditions of the occupations students are seeking;
  - Government job market statistics;

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to, cont.

- Whether employment is being offered by the institution or that a talent contest is being conducted; or
- Other requirements that are needed for employment.

---

---

---

---

---

---

---

---

## Describes Misrepresentation with Respect to, cont.

- False, erroneous or misleading statements about relationship with the Department of Education (§668.75):
  - May not suggest that an institution's agreement with another entity or person is approved by ED.

---

---

---

---

---

---

---

---

## Not Covered Under the Misrepresentation Regulations

- Does not provide an additional avenue for litigation for students, employees, and other members of the public; and
- Does not create a new Federal private right of action.

---

---

---

---

---

---

---

---

## Gainful Employment

§§600.2, 600.4, 600.5, 600.6,  
668.6, 668.7, and 668.8

(<http://ifap.ed.gov/gainfulemployment/info/>,  
which includes DCLs and FAQs)

---

---

---

---

---

---

---

---

## Gainful Employment in a Recognized Occupation

- **Prior Rules:** A proprietary institution of higher education, and a postsecondary vocational school, and one-year programs at institutions of higher education must provide eligible programs of training that prepare students for “gainful employment in a recognized occupation.” A “recognized occupation” is listed in the “occupational division” of the latest edition of the *Dictionary of Occupational Titles*. Gainful employment is not defined.

---

---

---

---

---

---

---

---

## Gainful Employment in a Recognized Occupation, cont.

- **Final Rules:** A “recognized occupation” is re-defined by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O\* NET-SOC code established by the Department of Labor and available at: <http://online.onetcenter.org>

---

---

---

---

---

---

---

---

## Gainful Employment Reporting to the Department of Education and Disclosures to Prospective Students

- Gainful employment rules apply to:
  - Programs that do not result in a degree at public and private non-profit institutions; and
  - Degree and non-degree programs at for-profit institutions (except for some liberal arts programs).
- Non-Title IV programs are not subject to the gainful employment disclosure and reporting requirements.

---

---

---

---

---

---

---

---

### Gainful Employment Reporting to the Department of Education and Disclosures to Prospective Students, cont.

- A listing of CIP codes is available at: <http://nces.ed.gov/ipeds/cip2010>.
- Standard Occupational Classification (SOC) codes are published by the Department of Labor and are available at: <http://www.bls.gov/soc>.
- There is a crosswalk between CIP and SOC codes that can be found at <http://www.onetonline.org/crosswalk>.

---

---

---

---

---

---

---

---

### Annual Submission

- An institution must annually submit information to the Department for each student who is enrolled in a program that prepares students for gainful employment in a recognized occupation during an award year, the institution must provide to the Department the following:
  - Information that identifies the student, the institution, the program, and the credential (NOTE: The DCL of April 20, 2011 states that institutions should not report students for whom the institution does not have a Social Security Number.);

---

---

---

---

---

---

---

---

### Annual Submission, cont.

- If a student began attending a program during the award year, provide the name, Classification of Instructional Program (CIP) code of that program, and the credential;
- If the student completed a program during the award year:
  - The name, CIP code, and credential of that program and the date the student completed the program;
  - The amounts the student received from private education loans and the amount from institutional financing plans that the student owed the institution upon completing the program (any school financing that remains upon graduation); and

---

---

---

---

---

---

---

---



## Annual Submission, cont.

- Whether the student matriculated to a higher credentialed program at the institution, or, if available, evidence that the student transferred to a higher credentialed program at another institution; AND
- For each program, by name and CIP code, offered by the institution, the total number of students enrolled in the program at the end of the award year and identifying information for those students.

---

---

---

---

---

---

---

---

## Annual Submission, cont.

- Reporting deadlines:
  - November 15, 2011:
    - 2006-2007 award year information if available;
    - 2007-2008, 2008-2009, 2009-2010, and 2010-2011 award year information.
  - October 15, 2012
    - 2011-2012 award year information.

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students

- For each program with the CIP code offered by the institution, the institution must provide prospective students with the following information:
  - The occupations by name and SOC codes (SOC = Standard Occupational Classification) that the programs prepare students to enter:
    - With links to occupational profiles on O\*NET [Enter the program CIP codes on the O\*NET crosswalk at <http://online.onetcenter.org/crosswalk/>]; and

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

NOTE: The FAQ D-Q1 states that a gainful employment program is identified by the combination of the first 6 digits of the institution's OPEID, the program's 6 digit CIP code, and the program's Credential Level. Therefore, two programs with the same 6-digit CIP code and Credential Level but with different specializations and different program names should be treated as one program. Programs are reported by OPEID, which means that all locations are in the same report.

NOTE: The Electronic Announcement #25 of 9/18/2011 revised D-Q1 stating that institutions may make separate disclosures if different lengths, different tuition and fees or other costs, or programs offered in different states. However, it does not apply to reporting (all programs with the same CIP code and credential level) or the GE metrics.

---

---

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- The on-time graduation rate for the students completing the program:
  - On-time graduation represents the percentage of students who completed the program "no later than its published length." (See page 66838 of the Preamble of the final regulations.)

NOTE: In other words, it is not completion within 150% of the normal timeframe for first-time, first year undergraduate students as provided under the Student Right-to-Know Act;

---

---

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- The tuition and fees it charges a student for completing the program within the normal time, the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but
  - The institution must provide a Web link, or access, to the program cost information the institution makes available under the consumer disclosures.

---

---

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- The placement rate for students completing the program as determined by a methodology developed by the NCES (Meeting are beginning in March to develop NCES methodology):
  - In the meantime, if the institution is required by its accrediting agency or State agency to calculate a placement rate on a program basis, it must disclose that rate as well as identify the accrediting agency or State agency under whose requirements the rate was calculated (If an institution is required to calculate placement rates for both the State and accrediting agency, it must report both rates); and

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- If the accrediting agency or State agency requires an institution to calculate a placement rate at the institutional level or other than on a program basis, the institution must use that same methodology to calculate a placement rate for each program and disclose that rate.

NOTE: 34 CFR 668.41(d)(5)(i)(A) states that institutions must disclose their placement rates with the source, methodology and time period, if it calculates a placement rate (as of July 1, 2010).

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

NOTE: The regulations may require the publication of multiple placement rates.

- The median loan debt incurred by students who completed the program "as provided by the Secretary" as well as any other information the Secretary provided to the institution about that program. The median loan debt is segregated by:
  - FFEL/Direct Loans;
  - Private education loans; and
  - Institutional financing plans (i.e., the amount student is obligated to pay at completion of program).

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- The disclosures described above must be in “promotional materials” made available to prospective students:
  - Page 66836 of the Preamble of the final regulations states that these disclosures should be made “available in promotional materials conveyed to prospective students and the disclosure must be simple and meaningful;”
  - Section 668.6(b)(2)(iv) and page 66836 of the Preamble also state that the Department intends to develop a disclosure form, but until a form is developed and approved, institutions must comply with the disclosure requirements independently. [NOTE: The Department has developed a disclosure template and is currently seeking public comment about the design of the form through the information collection process under the Paperwork Reduction Act of 1995. Information about the process and a draft of the form can be found at: <http://edicsweb.ed.gov>;

---

---

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- Page 66836 of the Preamble states that institutions must provide “clear and prominent notice delivered to students at appropriate times and in promotional materials prior to enrollment;”
- NOTE: The FAQs state that if an “invitation, advertisement, or solicitation mentions or otherwise refers to a specific educational program or programs, the disclosure information must be included whenever feasible. If providing the information is not feasible because of the size or structure of the invitation, advertisement, or solicitation, *an institution may include either the printed URL or a live link to the website where the required information is located, with a clear explanation of the information that is available at the website.* An example of a compliant disclosure under the guidance could include the following text: “For more information about our graduation rates, the median debt of students who completed the program, and other important information, please view our website at, [www.XYZcollege.edu/ABCprogram/disclosure](http://www.XYZcollege.edu/ABCprogram/disclosure).”

---

---

---

---

---

---

---

---

---

---

## Annual Disclosures to Prospective Students, cont.

- The disclosures must be provided prominently in a simple and meaningful manner on the “home page of [the institution’s] program Web site” as well as via a link on any other Web page containing general, academic, or admissions information about the program. The information must:
  - Be in an open format that can be retrieved, downloaded, indexed and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine readable, and is made available to the public without restrictions that would impede reuse of the information.

---

---

---

---

---

---

---

---

---

---

**Reporting New Educational Programs that Prepare Students for Gainful Employment in a Recognized Occupation**

- Final regulations published on October 29, 2010 at 34 C.F.R. 600.20(d) provide that if an institution intends to add a new GE program to its list of Title IV-eligible programs, it must notify the Department of its intent at least 90 days prior to the first day of class of the proposed program. The Department issued Gainful Employment Electronic Announcement #5 to describe the procedures, including the electronic application instructions and the Notice Format. (See <http://ifap.ed.gov/eannouncements/060111ReportingNewGEPrograms.html>.)

---

---

---

---

---

---

---

---

**Reporting New Educational Programs that Prepare Students for Gainful Employment in a Recognized Occupation, cont.**

- **Timelines:**
  - New GE programs where the first day of class will begin on or after October 1, 2011, institutions must provide notification to the Department at least 90 days prior to the first day of class. If the institution does not give notice at least 90 days before the first day of class, it must wait for ED approval.
  - Institution may offer program unless Secretary alerts institution at least 30 days before the first day of class that the program must be approved.

---

---

---

---

---

---

---

---

**Reporting New Educational Programs that Prepare Students for Gainful Employment in a Recognized Occupation, cont.**

- When reviewing application for a new program, the Secretary will look at the following:
  - Institution's financial responsibility and administrative capability;
  - Whether program(s) will replace several similar programs currently provided;
  - Whether number of additional program(s) is consistent with historic growth and operations; and
  - Whether the process and determination by institution to offer program(s) is sufficient.

---

---

---

---

---

---

---

---

**Reporting New Educational Programs that Prepare Students for Gainful Employment in a Recognized Occupation, cont.**

- Notice to Secretary of new GE program must include:
  - Description of how institution determined need for program and how the program was designed to meet local market needs or for online program, regional or national market needs;
  - Wage analysis the institution may have performed, including BLS data;
  - Description of how program was reviewed or approved by business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates;
  - Submit documentation of accrediting agency approval;
  - Submit documentation of state approval; and
  - Provide date of the first day of class of the new program.

---

---

---

---

---

---

---

---

**NPRM for Seeking Approval of New GE Programs – 9/27/2011**

- Limit new GE programs notification requirements for:
  - Failing programs that were voluntarily discontinued.
  - A program that became ineligible; or
  - Substantially similar program to a failing program for any 1 of 2 most recent FYs.

---

---

---

---

---

---

---

---

**Final Regulations to Gainful Employment – 6/13/2011**

- On June 13, 2011, the Department of Education issued final regulations in the *Federal Register* requiring programs that prepare students for gainful employment in a recognized occupation to “better prepare students for ‘gainful employment’ or risk losing access to Federal student aid.”
- “The new regulations will help ensure that students at these schools are getting what they pay for: solid preparation for a good job,” according to Secretary of Education Arne Duncan in a press release of June 2, 2011.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- The final regulations apply to most non-degree and degree-granting programs at for-profit institutions (except for some liberal arts baccalaureate programs that meet the exception) and all nondegree programs at nonprofit and public institutions.
- (The DCL is available at: <http://ifap.ed.gov/dpcretters/GEN1110.html>)

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

§668.7 Gainful employment in a recognized occupation:

■ **Minimum Standards:** The rule states that a program is considered to provide training that leads to gainful employment in a recognized occupation if it meets one of the following three measures:

- The program has a loan repayment rate of at least 35 percent (Loan Repayment Rate assesses whether the FFEL and Direct Loan debt incurred by a particular cohort of borrowers to attend the program (graduates and withdrawals) is being repaid at a rate that implies gainful employment.);

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- The program has an annual loan payment that is less than or equal to 30 percent of discretionary income (Discretionary Income Threshold determines whether the annual loan repayment required on loan debt attributable to the academic program by those who completed the program is reasonable compared to their discretionary income); or
- The program has an annual loan payment that is less than or equal to 12 percent of annual earnings (Actual Earnings Threshold establishes whether the annual loan repayment required on loan debt attributable to the academic program by those who completed the program is reasonable when compared to their actual annual earnings).

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- An academic program that passes any one standard is considered to be preparing students for gainful employment. A program that fails all three standards for a given year is considered to have failed to demonstrate that it meets the gainful employment condition of program eligibility for that year. A program that fails all three standards for three out of four years loses Title IV eligibility. (The Department's position is that a good program could have a bad year, but it is far less likely that a good program could have three bad years out of four years. Consequently, the first year that a program could lose eligibility under the final rules is early 2015 when ED issues the debt measures for FY 2014.)

---

---

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Debt measures refer to the loan repayment rate and debt-to-earnings ratios.
- A fiscal year (FY) is the 12-month period starting October 1 and ending September 30. For example, FY 2012 is from October 1, 2011 to September 30, 2012.
- A two-year period is the period covering two consecutive FYs that occurs on:
  - The third and fourth FYs (2YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009; or

---

---

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- **Loan Repayment Rate:** The annual loan repayment rate for an academic program is the percentage of loans borrowed to attend that program that are in satisfactory payment three to four years after entering repayment. For example, the loan repayment rate for FY 2012 (October 1, 2011 through September 30, 2012) will be determined based on loans that entered repayment during either FY 2008 or FY 2009 (October 1, 2007 through September 30, 2009) and were in acceptable repayment status during the period October 1, 2011 through September 30, 2012. [NOTE: The FY 2012 period used to determine the acceptable repayment status is four years after the loans entered repayment during FY 2008 and three years after the loans entered repayment during FY 2009.]

---

---

---

---

---

---

---

---

---

---



## Final Regulations to Gainful Employment, cont.

- For the most recently completed FY, the Secretary will calculate the loan repayment rate as follows:

$$\frac{\text{OOPB of LPF plus OOPB of PML}}{\text{OOPB}}$$

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Original Outstanding Principal Balance (OOPB) is the amount of the outstanding balance, including capitalized interest, on FFEL or Direct Loans owed by students (graduates and withdrawals) for attendance in the program on the date those loans first entered repayment.
- Loans Paid in Full (LPF) are loans that have never been in default, including a consolidation loan and its underlying loans. Consolidation loans must be paid in full to be considered LPF.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Payments Made Loans (PML) are loans that have never been in default, including a consolidation loan and its underlying loans, and:
  - PML are payments made by a borrower during the most recently completed FY that reduce the outstanding balance of the loan, including the outstanding balance of a consolidation loan, to an amount that is less than the outstanding balance of the loan at the beginning of that FY by at least \$1.00.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

### ■ Debt-to-Earnings Ratios:

#### ■ Discretionary Income rate:

Annual loan payment based on median loan debt (Title IV, Private & School)  
Higher of Mean or Median Annual Earnings – (1.5 X Poverty Guideline)

#### ■ Earnings Rate:

Annual loan payment based on median loan debt (Title IV, Private & School)

Higher of Mean or Median Annual Earnings

#### ■ Mean is the average of all the values divided by

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Median is the middle value of a list arranged in order of value and the highest and lowest values cancel each other out. (See Q&A #5 of the Gainful Employment – FAQs at <http://ifap.ed.gov/GainfulEmploymentInfo/2011GEFAQ.html>.)

NOTE: The final regulations consider programs with a median loan debt of zero to be meeting the measures since there is no debt burden on the students in the program.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

### ■ Cohort of Program Completers:

- The debt-to-earnings ratio uses the income earned during the calendar year preceding the most recently completed fiscal year by former students who completed the program during an earlier period of time.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Using the median loan debt for the program and the current annual interest rate on Unsubsidized Direct Loans (6.8%) on a:
  - 10-year repayment schedule for a program that leads to an undergraduate or post-baccalaureate certificate or to an associate's degree;
  - 15-year repayment schedule for a program that leads to a bachelor's degree or master's degree; or
  - 20-year repayment schedule for a program that leads to a doctoral or first-professional degree.

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Loan debt includes:
  - FFEL and Direct Loans (except for parent PLUS or TEACH Grant-related loans), including capitalized interest owed by the student for attendance in the program;
  - Any private education loans (reported to ED via NSLDS no later than 10/1/2011- See 34 C.F.R. 668.6); or
  - Debt obligations arising from institutional financial plans (reported to ED via NSLDS no later than 10/1/2011 – See 34 C.F.R. 668.6);

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- Annual earnings will be obtained from the Social Security Administration (SSA) or another Federal agency and the Secretary will obtain the most currently available mean and median annual earnings of the students who completed the program during the 2YP or the 2YP-R.
- Alternative Earnings can be used if a program fails all debt measures. An institution can demonstrate compliance with a debt-to-earnings ratio by using earnings from sources other than SSA, including a State-sponsored data system, an institutional survey conducted in accordance with NCES standards, or, for FYs 2012, 2013, and 2014 only, the Bureau of Labor Statistics (BLS).

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- After the Secretary calculates the final debt measures:
  - Institution must disclose the final debt measures for each program; and
  - ED may disseminate the final debt measures.
- **Failing Program:** Starting with the debt measures calculated for FY 2012, the program is a failing program if it does not meet any of the minimum standards. [NOTE: Students enrolled in a failing program remain eligible for Title IV funds.]
- **Ineligible Program:** A failing program becomes ineligible, if starting with the debt measures calculator for FY 2012, it does not meet any of the minimum standards for three out of the four most recent FYs.

---

---

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- **Debt Warnings:** A failing program must warn in a timely manner currently enrolled and prospective students of the consequences of failure.

---

---

---

---

---

---

---

---

---

---

## Final Regulations to Gainful Employment, cont.

- **Transition year:** The earliest a program can become ineligible is in early 2015 after the Department has calculated the debt measures for FYs 2012, 2013, and 2014. However, the final regulations provide for a transition year during which the number of programs losing Title IV eligibility will be limited to no more than 5% of the total number of students who completed their programs during FY 2014. The regulations apply the cap to each of three institutional categories – public, private nonprofit, and proprietary – to ensure that no sector bears more than 5%. Within each institutional category, loan repayment rates will be sorted from lowest to highest. Starting with the lowest repayment rate, ED will identify ineligible programs until the 5% cap is reached, but not exceeded. [NOTE: Although no sanctions will be applied during the transition year to ineligible programs that have a rate over the cap, the program's rate during the transition year will count as a failing year in subsequent years.]

---

---

---

---

---

---

---

---

---

---

## GE Informational Rates for FY 2011

- FY 2011 (2010-2011) GE Informational Rates to be released Spring 2012 based on FY 2007 and FY 2008 Cohorts (Earnings Year - 2010).
- Department will release Title IV loan debt, private loan debt, and institutional financing debt.
- While these rates are for informational purposes only, the GE Informational Rates will be made public.

---

---

---

---

---


---

---


---

---

---




Questions??



Sharon H. Bob, Ph.D. – [Sharon.Bob@ppsv.com](mailto:Sharon.Bob@ppsv.com)

Powers Pyles Sutter & Verville PC  
1501 M Street NW, Seventh Floor | Washington, DC  
20005  
tel 202.466.6550 | fax 202.785.1756  
**April 24, 2012**



134

---

---

---

---

---

---

---

---

---

---

## Sharon H. Bob, Ph.D.

**Practice Areas:**


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

**Member:**

- NASFAA
- CCA

**Education:**

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




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

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

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

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



135

---

---

---

---

---

---

---

---

---

---