

# Federal Potpourri

## A Washington Perspective

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# Congressional and Federal Update State Authorization Clock and Credit Hours

**Sharon H. Bob, Ph.D.**

# Obama Unveils FY 2014 Budget Proposal

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- On 4/10/2013, the Obama Administration released its \$3.77 trillion FY 2014 budget proposal, which:
  - Repeals sequestration but includes \$1.8 trillion in additional deficit reduction over 10 years;
  - Makes permanent American Opportunity Tax Credit;
  - Establishes \$1 billion Race-to-the-Top for competitive State grants to support higher education reform, while containing tuition costs;

# Obama Unveils FY 2014 Budget Proposal, cont.

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- Reforms campus-based programs to target institutions with commitment to provide a high quality education at a reasonable price while emphasizing the link between study and work experiences;
- Includes a permanent solution to the student loan interest rate by converting to a variable interest rate structure for subsidized and unsubsidized loans and PLUS loans;
- Extending Pay-as-You-Earn repayment plan to all student borrowers beginning 7/2014; and

# Obama Unveils FY 2014 Budget Proposal, cont.

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- Increasing maximum annual Pell Grant to \$5,785 for 2014-2015.
- A summary of the budget proposal is found at: <http://www2.ed.gov/about/overview/budget/budget14/summary/14summary.pdf>

# Congress Approves Compromise Package and Avoids Fiscal Cliff

On 1/1/2013, Obama signed into law the *American Taxpayer Relief Act* (H.R. 8) – P.L. 112-240.

- Package of tax increases, tax cuts and a delay in automatic spending cuts - sequestration – until 3/1/2013.
- The Education Incentives included in P.L. 112-240 are as follows:
  - Temporarily extends the American Opportunity Tax Credit (AOTC) for five additional years through 2017 (Created under the ARRA, the AOTC is available for up to \$2,500 of the cost of tuition and related expenses paid during the taxable year.);

# Congress Approves Compromise Package and Avoids Fiscal Cliff, cont.

- Permanently extends the student loan interest deduction. (Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses up to \$2,500. Students and families may claim the interest deduction beyond the 60 months.);
- Permanently extends the Coverdell Accounts (The Coverdell Education Savings Accounts are tax-exempt savings accounts used to pay the higher education expenses of a designated beneficiary. The annual contribution is increased from \$500 to \$2,000.);

# Congress Approves Compromise Package and Avoids Fiscal Cliff, cont.

- Permanently extends the exclusion for employer-provided educational assistance (The employee may exclude from gross income up to \$5,250 for income and employment tax purposes per year of employer-provided education assistance.); and
- Permanently excludes from income of amounts received under certain scholarship programs (Scholarships for qualified tuition and related expenses are excludable from income.).

# March 1, 2013 Arrives

## Sequestration and Title IV Aid

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- Budget Control Act of 2011 (8/2/2011) put in place “across-the-board” Federal budget cuts.
- On 3/1/2013, budget cuts go into effect:
  - Pell Grants are exempt for 2012-2013 and 2013-2014;
  - FWS and FSEOG are unaffected for 2012-2013, however, FWS and FSEOG are to be reduced by \$86 million for 2013-2014 (reductions included in April 2013 funding authorization);

# Sequestration and Title IV Aid, cont.

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- Annual and aggregate loan limits for Direct Loans are not changed, however, loan fees will increase for first disbursements on or after July 1, 2013:
  - Loan fee of 1% for Sub and Unsub Loans will increase to 1.05% - Fee on \$5,500 loan will increase from \$55.00 to \$57.75; and
  - Loan fee of 4% for PLUS Loans will increase to 4.20% - Fee on \$10,000 loan will increase from \$400 to \$420.
- See 4/5/2013 Electronic Announcement at <http://ifap.ed.gov/eannouncements/040512UpdateImpactOffSequestrationOnTitleIVPrograms.html>

# Sequestration Continued but Modified

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- On 3/26/2013, President Obama signed H.R. 933, *Consolidated and Further Continuing Appropriations Act, 2013* (P.L. 113-6), into law.
  - Across-the-board cuts under sequestration continue until 9/30/2013;
  - Funds appropriated for FWS and FSEOG (no Perkins Loans Funds); and
  - Includes amendment sponsored by Senators James Inhofe (R-OK) and Kay Hagan (D-NC) to restore funding for military tuition assistance programs that had been suspended.

# State of the Union Calls for Increased Accountability in Colleges to Address Rising Costs

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- On 2/12/2013, President Obama said in his State of the Union address:  
“Taxpayers can’t keep on subsidizing higher and higher costs for higher education. Colleges must do their part to keep costs down, and it’s our job to make sure they do. So, tonight, I ask Congress to change the *Higher Education Act* so affordability and value are included in determining which colleges receive certain types of federal aid.

# State of the Union Calls for Increased Accountability in Colleges to Address Rising Costs, cont.

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And, tomorrow, my Administration will release a new College Scorecard that students and parents can use to compare schools based on simple criteria: where you can get the most bang for your educational buck.”

# College Scorecard Released by White House

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- College Scorecard is part of President's efforts to hold colleges accountable for cost, value, and quality and includes the following information:
  - Net price;
  - Graduation rates;
  - Loan default rates;
  - Student loan debt; and
  - Earnings potential.

# College Scorecard Released by White House, cont.

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- It is an interactive tool so that families can tailor to individual needs: location, size, campus setting, and degree and major programs.
- Little focus on Net Price Calculator required under the HEOA. Latest template for 2011-2012 released in 1/2013 on the IPEDS web site [ED released guidance on NPC on 2/27/2013 (GEN-13-07)].
- Information on the College Scorecard at: <http://www.whitehouse.gov/scorecard>.

# White House Issues White Paper Calling for Changes in Criteria for Accreditors

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- On 2/13/2013, White House released white paper titled “The President’s Plan for a Strong Middle Class & Strong America,” which calls for “major changes to the criteria accreditors use to evaluate colleges, asking Congress to either require accreditors to take college prices and educational value into account or to create an alternative system based on ‘performance and results.’”

# White House Issues White Paper Calling for Changes in Criteria for Accreditors, cont.

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- “The President will call on Congress to consider value, affordability, and student outcomes in making determinations about which colleges and universities receive access to federal student aid, either by incorporating measures of value and affordability into the existing accreditation system; or by establishing a new, alternative system of accreditation that would provide pathways for higher education models and colleges to receive Federal student aid based on performance and results.”

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# **Congressional Focus on For-Profit Colleges**

# 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.”

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

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- 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.

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

# Secretary Duncan Responds to Harkin with Plans to Strengthen Oversight

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- 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.

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

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- 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.

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- 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.

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

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- 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.

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- 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); and

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

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- Require schools to lose Title IV eligibility after only one year of non-compliance with the 85/15 rule.
- 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.

# Harkin and Hagan Introduce Bill to Prohibit Use of Title IV Revenue for Recruiting or Marketing

- On 4/18/2012, Senators Tom Harkin (D-IA) and Kay Hagan (D-NC) introduced *Protecting Financial Aid for Students and Taxpayers Act*, which would prohibit an institution of higher education from using “revenues derived from federal educational assistance funds for recruiting or marketing activities.” Marketing activities include:
  - Paid announcements in newspapers; radio, bill-boards, etc.;
  - Efforts to identify prospective students;

# Harkin and Hagan Introduce Bill to Prohibit Use of Title IV Revenue for Recruiting or Marketing, cont.

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- Participation in preadmission or advising activities;
- Selecting an individual to provide contact information; and
- Other activities described by the Secretary.

# Lautenberg and Harkin Introduce S. 406 to Strengthen Oversight

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- On 2/28/2013, Senators Frank Lautenberg (D-NJ) and Tom Harkin (D-IA) introduced S. 406, *Students First Act*, which would strengthen oversight of institutions of higher education:
  - Existing program reviews do not examine schools most “at risk” of failing to comply with ED requirements; and
  - ED does not adequately sanction schools to punish fraudulent behavior and deter similar violations.

# Lautenberg and Harkin Introduce S. 406 to Strengthen Oversight, cont.

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- Bill would create triggers that would require ED review of institutions, would strengthen sanctions; and would hold executives of institutions personally responsible.
- Triggers would include high CDR, serial forbearance and default rate manipulation, spending more than 20% of revenue on recruiting and marketing, deriving more than 85% of revenue, and enrollment increasing more than 50%.
- Title IV eligibility would be revoked from institutions that participate in incentive compensation, misrepresentation, or violate program integrity regulations.

# Hagan Introduces S. 528 to Prohibit Institutions from Using Revenues for Marketing

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- On 3/12/2013, Senator Kay Hagan (D-NC) re-introduced *Protecting Financial Aid for Students and Taxpayers Act, S. 528*:
  - Institutions would be prevented from using revenues derived from federal educational assistance funds for advertising, marketing, or recruiting.

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# **Obama Administration Addresses Aggressive Recruiting of Veterans and Servicemembers**

# Obama Issues Executive Order to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans and Service Members

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- On 4/27/2012, President Obama signed Executive Order 13607 – Establishing Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members, designed to limit deceptive and misleading practices by educational institutions that target veterans and service members and their families.
  - Colleges must help ensure that military and veteran students have the information they need;
  - Colleges should improve support services for service members and veterans;
  - Colleges should use prorata refund policy;
  - DoD should keep bad actors off of military installations;

# Obama Issues Executive Order to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans and Service Members, cont.

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- VA should crack down on improper recruiting practices;
- VA, DoD, and ED should provide veterans with a complaint system;
- VA, DoD, and ED should provide students with better data on educational institutions; and
- VA and DoD should strengthen enforcement of student protections.

# VA & DoD Request that Institutions Agree to Comply with Executive Order

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- On 6/29/2012, VA requested that educational institutions respond by 8/1/2012 of their intent to comply (originally 6/30/2012);
- On 7/13/2012, ED provided guidance (GEN-12-10) on implementing E.O. 13607;
- On 12/10/2012, DoD released revised Tuition Assistance MOU that must be signed and submitted by 3/1/2013 that implements E.O. 13607; and

# VA & DoD Request that Institutions Agree to Comply with Executive Order, cont.

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- Schools must agree to use Financial Aid Shopping Sheet for veterans and service members.
- On 12/3/2012, VA announced “GI Bill” registered as a trade-mark.

# Improving Transparency of Education Opportunities for Veterans Act 2012 – P.L. 112-249

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- H.R. 4057 was sponsored by Gus Bilirakis (R-FL) and steered through Senate by Patty Murray (D-WA);
- Signed into law on 1/10/2013 – P.L. 112-249.
- Improves outreach and transparency to veterans and service members.
- H.R. 4057 requires institutions to disclose:
  - Accrediting and state agencies;
  - Whether Title IV participant;
  - Tuition and fees;
  - Median loan debt;

# Improving Transparency of Education Opportunities for Veterans Act 2012 – P.L. 112-249, cont.

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- Cohort default rate;
- Total enrollment, graduation rate, and retention rate;
- Whether institution provides counseling and job placement; and
- Transfer of credit policy.

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# **ED Addresses Distance Education**

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

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- 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.

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- 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.

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- 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

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- DCL provided guidance and action to address potential fraud in Federal student aid programs at:  
<http://ifap.ed.gov/dpcletters/GEN1117.html>
- 9/26/2011, OIG issued report on “Distance Education Fraud Rings” at:  
<http://www2.ed.gov/about/offices/list/oig/invtreports/l42l0001.pdf>
- Verification requirements for 2013-2014 require schools to ask selected students for a government-issued ID card.

# More to Come!

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- On 6/13/2012, ED released second annual College Affordability and Transparency Lists. Also provided is tuition and net price information for all institutions. See <http://collegecost.ed.gov>

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

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- 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

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- 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) - 600% of LEUs;
- AGI to qualify for automatic zero: EFC reduced from \$31,000 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.

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- 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.
  - DCL of 6/28/2012 (GEN-12-09) clarifies changes and includes examples at <http://ifap.ed.gov/dpcletters/GEN1209.html>.

# Democrats and Republicans Agree that Subsidized Loan Interest Rate Should Remain at 3.4% - P.L. 112-141

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- On 7/6/2012, President signed into law P.L. 112-141 that includes:
  - One-year extension of 3.4% interest rate on Subsidized Direct Loans through 6/30/2013; and
  - Eligibility for Subsidized Direct Loans limited for new borrowers on or after 7/1/2013 to 150% of published length of borrower's program. See <http://ifap.ed.gov/eannouncements/071011/RateFinal.html>

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

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- 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 affect on or after 7/1/2014 but will go into effect in 2012 for new borrowers on or after 10/1/2007 and who took out a loan on or after 10/1/2011, 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.

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- On 11/1/2012, final rules published on “Pay As You Earn” repayment plan to be implemented 12/21/2012;
- On 12/21/2012, ED issued press release announcing implementation.
- “Special Direct Consolidation Loan Program – Beginning 1/2012 and for 6 months, 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>.

# ED Works with Consumer Financial Protection Bureau (CFPB)

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- ED and CFPB launched 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.
- DCL GEN-12-10 Guidance on implementation of Executive Order 13607.
- DCL GEN-13-05 Guidance on implementation of Financial Aid Shopping Sheet.

<http://ifap.ed.gov/dpcletters/GEN1305.html>

# Financial Aid Shopping Sheet

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- Institutions are expected to use Shopping Sheet to provide required personalized and standardized form with financial aid information for undergraduate and graduate service members, veterans, military spouses, and other military family members covered by EO 13607.
- It must be provided to prospective students who apply for Title IV aid using the FAFSA.
- It should be received prior to enrollment.

# Financial Aid Shopping Sheet, cont.

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- Many institutions will provide Shopping Sheet for all students as award notice or supplement to award notice.
- Financial Aid Shopping Sheet includes:
  - Estimated Cost of Attendance
  - Grants and Scholarships to Pay for College
  - What You will Pay for College – Net Costs – COA minus Grants and Scholarships
  - Work Options
  - Loan Options

# Financial Aid Shopping Sheet, cont.

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- Financial Aid Shopping Sheet includes (cont.):
  - Other Options (e.g., Family Contribution, Payment Plans, Parent PLUS Loan, Military and National Service Benefits, Non-Federal Private Education Loans)
  - Graduation Rate
  - Loan Default Rate
  - Median Borrowing of Federal Loans
  - Repaying Your Loans – Repayment Options
  - Contact Information provided by the institution

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

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- 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.
- 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.
- On 7/20/2012, CFPB issued report to Congress on Private Student Loans.
- On 12/17/2012, CFPB published the procedures for examining private education loan lenders.

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

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- On 2/21/2013, CFPB published a notice seeking suggestions to increase affordable repayment plans for private student loan borrowers.
- On 3/28/2013, CFPB published a notice seeking comments on extending oversight to nonbank student loan servicers to ensure compliance with consumer financial laws, both servicers of private and federal student loans.

# Default Rates Issued: 2-Year Draft FY 2011 and 3-Year Draft FY 2010

- On 3/18/2013, ED issued 2-year draft FY 2011 CDR;
- On 3/25/2013, ED issued 3-year draft FY 2010 CDR;
- Final CDRs will be issued 9/2013;
- If official 3-year CDR is equal to or greater than 30%, school must implement a default management plan that is submitted to ED;
- Beginning in 2014, only 3-year CDRs will be published; and
- FY 2009 3-year CDR 13.4%.

# APSCU Litigation

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- On 6/5/2012, the U.S. Court of Appeals for the DC Circuit ruled in
  - APSCU v. Duncan:
    - For incentive compensation rules, ED did not exceed authority by not permitting “salary adjustments” based on success in securing enrollments or the awarding of financial aid;
    - ED did not exceed authority in applying prohibition to higher level employees;

# APSCU Litigation, cont.

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- ED exceeded authority with regard to misrepresentation rules:
  - By allowing ED to take enforcement action against schools without any procedural protections;
  - By prescribing misrepresentations not covered by HEA (HEA authorizes sanctions against substantial misrepresentations of the nature of its educational program, its financial charges, or the employability of its graduates, but the rules were broader.); and
  - By defining substantial misrepresentation to include “tendency or likelihood to confuse.”
- Upheld state authorization rules for land-based schools requiring state authorization.

# APSCU Litigation, cont.

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- ED failed to provide notice that distance education schools must be licensed in every state in which they operate.
- NOTE: DCL GEN-12-13 states that the Court vacated on procedural grounds the requirement that state authorization requirement extends to students receiving distance education in a state which the institution is not physically located. ED will not enforce 34 CFR 600.9(c), “although institutions continue to be responsible for complying with all state laws as they relate to distance education.” (Q&A #7) “It must make sure the student has access to the state contact information for filing complaints in the State” if the student is in another state taking the program by distance education. (Q&A #12)

# APSCU Lawsuit on GE Rules

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- On 6/30/2012, the U.S. District Court for DC vacated several GE provisions.
- APSCU v. Duncan
  - Gainful employment metrics: While the Judge concluded that the debt to earnings metrics were based on expert studies and industry practice, the Judge ruled that the repayment rate metric was arbitrary and capricious. Because the three metrics were intertwined, the Judge vacated all three of the metrics. Therefore, the three metrics do not exist and the FY 2011 Informational Gainful Employment metrics (see below) are irrelevant at the present time.

# APSCU Lawsuit, cont.

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- Gainful employment reporting: Since the Judge vacated the debt measures of the gainful employment regulations, the Judge also concluded that he also must vacate the gainful employment reporting regulation as well. This regulation would have required institutions to report student-level data for FY 2012 to the Department of Education by October 1, 2012.

# APSCU Lawsuit, cont.

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- New Program Approval Process: Since the Judge vacated the debt measures of the gainful employment regulations, the Judge also concluded that he also must vacate the regulation requiring institutions to use the gainful employment notification process for any new proposed gainful employment program and, if required, to wait for Department approval of the program. The prior notification and approval requirements are still in effect (i.e., adding new non-degree programs or any non-degree programs if provisionally certified).

# APSCU Lawsuit, cont.

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- Gainful employment disclosures: Institutions must continue to provide their gainful employment disclosures, which should have been updated for the 2011-2012 award year no later than 1/31/2013.
- For each GE program, the institution must provide:
  - Occupations by name and SOC codes with links to O\*NET crosswalk;
  - Tuition and Fees for program; typical books and supplies; room and board; and other expenses in accordance with 34 CFR 668.43(a)(1).
  - On-time graduation rate;

# APSCU Lawsuit, cont.

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- Placement rate if required by accrediting agency or state agency;
- Median loan debt for Title IV loans; private education loans; and institutional financing.

# Update on Litigation

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- On 3/19/2013, Judge Rudolph Contreras for the US District Court for DC denied motion filed by ED to reinstate its reporting requirements in the gainful employment regulations.
- Will ED appeal?
- Will ED include in neg reg?

# Update on Litigation, cont.

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- On 3/22/2013, ED amends preamble to incentive compensation regulations:
  - On 8/14/2012, Court remanded Department to Clarify why it eliminated safe harbor for compensation based on students successfully completing program; and
  - Department's failure to address adverse impact of regulations on minority enrollment.
  - ED explained that ED was concerned that recruiters were guiding students to short-term programs to ensure compliance, that schools were manipulating grading policies; and that schools could manipulate student employment data.

# Update on Litigation, cont.

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- ED will address changes to misrepresentation regulations in a later notice.

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# What to Expect in 2013?

# OIG Releases its FY 2013 Work Plan that Details Assignment Areas

- Issues related to student financial assistance programs including:
  - Investigations of allegations of fraud;
  - Institutional loan entrance and exit counseling practices;
  - Student loan debt and repayments;
  - Determination whether proprietary schools are in compliance with incentive compensation regulations;
  - Determination of the adequacy of FSA's contingency plans if a significant number of schools or locations are closed by a publicly traded institution;

# OIG Releases its FY 2013 Work Plan that Details Assignment Areas, cont.

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- Evaluation of FSA's oversight of schools that participate in Direct Loans;
- Determination of whether audited financial statements of proprietary schools' use of Title IV funds provide transparency needed for FSA to make informed decisions about program's effectiveness; and
- Determination whether schools and servicers comply with requirements for processing direct payments to students to ensure that students are not unfairly charged fees and have ready access to credit balances.

# OIG Releases its FY 2013 Work Plan that Details Assignment Areas, cont.

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- OIG Plan is found at:  
<http://www2.ed.gov/about/offices/list/oig>.

# Notices and Hearings in 2013

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- Notice of 5/1/2012 announced neg reg to develop rules to:
  - Prevent fraud in distance education; and
  - Examine use of debit cards and other banking mechanisms for disbursing aid;
- NPRM for second package of Loan rules – expected 3/2013;
- Final rule eliminating 2 Pell Grants in an award year – expected 2/2013 (interim rule 5/2/2012);
- NPRM implementing limit of 150% on Subsidized Direct Loans expected 6/2013; and
- Reauthorization hearings.

# Getting Ready for Reauthorization

- On 4/2012, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) issued its Accreditation Policy Recommendations for the HEA 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.

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- Accrediting agencies should focus on value, standards, outcomes, cost, transparency and accountability;
- States should strive for consistency in the area of consumer protection and accountability; 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>

# Other Reauthorization Issues

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- Bill and Melinda Gates Foundation’s “Reimaging Aid Design and Delivery (RADD)”:
  - 16 organizations offered ideas for changing the aid programs; but lack of consensus.
  - Some agreement:
    - Interest rate on loans-time to move to market-based rate;
    - 7 different repayment plans – need to simplify and move to automatically enrolling students in income-based plan;
    - Current system of tax credits is too complex- little appetite to re-examine due to bipartisan support;

# Other Reauthorization Issues, cont.

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- Colleges overwhelmed with federal data-reporting requirements but ban on federal unit-record system-Shopping Sheet has better chance to survive than eliminating federal unit-record ban; and
- College Board report calls for focusing Pell Grants on neediest and different requirements for those 24 and younger versus 25 and older.

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# Program Integrity Regulations

# State Authorization

§§600.4(a)(3), 600.5(a)(4), 600.6(a)(3),  
600.9, and 668.43(b)

(DCL GEN-11-05, DCL GEN-11-11, DCL  
GEN 13-14)

# State Authorization Requirement

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- In order for an institution to be eligible to participate in the Title IV, HEA programs, it must be legally authorized to provide postsecondary education by the State in which it is located.
- ED sought to clarify what is required for an institution to be considered legally authorized by a State for purposes of Federal programs.

# Clarification of State Authorization Requirements

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- Requirements are clarified based on whether the institution is:
  - Established by name as an educational institution;
  - Authorized to conduct business; or
  - Authorized to operate as a nonprofit charitable organization.
- Federal, tribal, and religious institutions are exempt from these requirements.
- Requirements imposed on institutions providing distance education to students in a state in which it is not physically located. (7/12/11 District Court ruling struck down requirement that colleges offering online programs in other states needed approval from those states.)

# Institution is Established by Name as an Educational Institution

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- If established as an educational institution by a State, it:
  - Must be established **by name** as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by the State agency and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate;
  - Must comply with any applicable State approval or licensure requirements; and

# Institution is Established by Name as an Educational Institution, cont.

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- State may exempt the institution from State approval or licensure requirements based on:
  - The institution's accreditation if agency recognized by the Secretary; or
  - The institution being in operation for at least 20 years.
- School must provide some type of authorization as a postsecondary institution by the State; and a letter issued by the State naming the institution would not satisfy requirements.

# Institution is Authorized to Conduct Business in the State or to Operate as a Nonprofit Charitable Organization

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- If established on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization:
  - Must comply with the State approval or licensure requirements;
  - Must be approved or licensed **by name** to offer programs beyond secondary education, including programs leading to a degree or certificate; and
  - May not be exempt from the State approval or licensure based on accreditation, years in operation, or a comparable exemption.

# State Must Establish Complaint Process

- The State must have a process applicable to all institutions:
  - To review and address complaints, independent of the school's process, directly or through referrals; and
  - The State may fulfill this role through a State agency, the State Attorney General as well as other appropriate State officials; or
  - The State may use a combination of agencies.
  - State must remain responsible for responding to complaints, but may refer them to other entities (i.e., an accrediting agency for final resolution).
  - But all relevant officials or agencies must be included in an institution's institutional information that is disclosed under §668.43(b).

# ED Sends Reminder that Institutions are Required to Have State Approval by 7/1/2013

- DCL GEN-13-04 reminds institutions that the stay of enforcement of the State authorizing regulations ends 6/30/2013.
- In order to be eligible to participate in Title IV programs, an institution must be legally authorized by a State to provide a postsecondary education program, and the State must have a process to review and act upon complaints about the institution.
- Institution could lose eligibility to participate if it is not approved or authorized by the State.

# ED Sends Reminder that Institutions are Required to Have State Approval by 7/1/2013, cont.

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- Issue that is unresolved in some states relate to *licensure by means of accreditation* where it appears that there is no state-approval process.
- Issue that is unresolved relates to programs (i.e., cosmetology) which may not be authorized at the postsecondary level.

# Report Shows Colleges Avoid Seeking State Authorization in Certain States

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- Study shows that 2/3 of respondents in 2011 had not applied to one state and 2/3 of respondents applied to at least one state in 2013.
- 59% of respondents identified states from which they will not accept students: Minnesota, Massachusetts, Arkansas, Maryland, and Alabama.
- 29% of respondents plan to seek authorization in every state.

# Report Shows Colleges Avoid Seeking State Authorization in Certain States, cont.

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- Report is available at: [http://wcet.wiche.edu/wcet/docs/state-approval/UPCEA/2013UPCEA-WCET-SloanCStateAuthorizationReport\\_FULL.pdf](http://wcet.wiche.edu/wcet/docs/state-approval/UPCEA/2013UPCEA-WCET-SloanCStateAuthorizationReport_FULL.pdf).

# Credit Hour

§§600.2, 602.24, 603.24, and 668.8

# Why Establish a Credit Hour Definition?

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- 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.

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- 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 Program

- 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.

# ED Provides Guidance on Determination of Clock-Hour Program

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- On 3/29/2013, ED addressed determination of clock-hour program in FAQs:
  - If a State requires an institution to report clock hours in a program before program approved, is that program a clock-hour program?
    - "It depends on how the clock hour information is used. Simply reporting the number of clock hours in the program to the State does not necessarily mean that the program is treated as a clock hour program. If the State uses or requires the institution to use this information in a substantive way, the program is a clock hour program for Title IV purposes.

# ED Provides Guidance on Determination of Clock-Hour Program, cont.

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For example, if the State establishes a ratio of clock to credit hours for purposes of approving a program, or if the institution is required to use the clock hour information in calculating a refund under State law, it is considered to be a clock hour program."

- If a State requires a minimum number of clock hours to authorize a program, is the program automatically considered a clock hour program? For example, if a State requires that an automotive repair program consist of at least 1000 clock hours, is the program a clock hour program?
  - "Yes."

# ED Provides Guidance on Determination of Clock-Hour Program, cont.

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- If a State licensing board requires a student to complete a specified number of clock hours to sit for a licensing exam, is the program automatically considered a clock hour program.
  - "Yes."

# 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.*

# 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:*

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

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- A semester or a trimester hour must include at least 30 clock hours of instruction (7.5 hours of outside preparation); and
- A quarter hour must include at least 20 clock hours of instruction (5 hours of outside preparation).
- Assessment of outside preparation is on a course-by-course basis; and
- Accreditors must approve of outside preparation.

# 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.

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- 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

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- 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.

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- 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.

Questions??



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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 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.

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