

# NASASPS

## 39<sup>th</sup> Annual Conference

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

May 3, 2011



# Congressional Activities and Department of Education Actions

---

- Congressional Hearings
- GAO Studies
- Program Integrity Regulations

---

# **Congressional Hearings & GAO Reports**

# House Education Committee Addresses OIG Report Examining Accrediting Agencies

---

- On 6/17/2010, the House Education and Labor Committee, chaired by George Miller (D-CA), held a hearing on how accrediting agencies evaluate institutional policies regarding the awarding of academic credit and evaluating program length following the release of an OIG report on HLC's evaluation of an institution.
  - Kathleen Tighe (OIG) supported use of consistent minimum standards for determining credit hours as safeguard for students and taxpayers.

# House Education Committee Addresses OIG Report Examining Accrediting Agencies, cont.

---

- Sylvia Manning (HLC) said accrediting agencies could work with credit hour proposal but a federal definition would increase compliance costs. “Anyone who has ever taught or taken a class knows that the concept of credit hours is mushy.”
- Michale McComis (ACCSC) argued that overly prescriptive federal requirements could stifle flexibility and possibly exacerbate the problems of transfer credit.

# House Education Committee Addresses OIG Report Examining Accrediting Agencies, cont.

---

- While Mr. Miller said that he was not a foe of for-profit colleges, he was concerned that institutions like the one under investigation by the OIG had effectively kept down instructional costs by inflating the credits for courses while ensuring that its students receive the maximum federal aid.

# Senate HELP Committee Holds First of a Series of Hearings on Federal Education Spending at For-Profit Colleges

---

- On 6/24/2010, Senator Tom Harkin (D-IA), Chairman of the Health, Education, Labor and Pensions (HELP) Committee, held the first in a series of hearings on the federal investment in for-profit institutions. Senator Harkin noted that between 1998 and 2008, the for-profit sector has grown from 50,000 students to 1.8 million, a 225% increase. Students at for-profits schools are defaulting more frequently (1 out of 5 students).

# Senate HELP Committee Holds First of a Series of Hearings on Federal Education Spending at For-Profit Colleges, cont.

---

- Kathleen Tighe (OIG) announced that 21 of the 37 OIG reports have related to for-profit institutions. With the “tremendous growth” of the sector, the OIG’s concerns are:
  - Falsifying student identity for the benefit of the school;
  - Refund violations such as failing to pay refunds;
  - Problems with distance education requirements; and
  - Manipulation of default rates to keep them low.

# Senate HELP Committee Holds First of a Series of Hearings on Federal Education Spending at For-Profit Colleges, cont.

---

- Steven Eisman (Wall Street Investor and Short-Seller) said that the core problem with the sector was the “incentivizing” that occurs through schools and teachers being paid based on the number of students they enroll and concluded that we were on the “cusp of a new financial disaster.”
- Sharon Thomas-Parrott, SVP of DeVry, Inc., defended the for-profit sector by saying that the sector has grown for a reason, which is, to meet unmet need, especially among nontraditional students.

# Senate HELP Committee Holds First of a Series of Hearings on Federal Education Spending at For-Profit Colleges, cont.

---

- Senator Harkin concluded there are gaps in data regarding graduation and employment rates.
- Senator Harkin requested data from 30 for-profit institutions about finances, recruiting practices and student outcomes.

# Congressmen Request that the GAO Review For-Profit Institutions

---

- On 6/21/2010, a group of House and Senate Democrats sent a letter requesting the Government Accountability Office (GAO) to review the for-profit sector and its share of revenue from federal funding. They asked that the following items be addressed:
  - The growth and change in the postsecondary education sector over the last several years;
  - What is known about the quality of educational programs offered by proprietary institutions;

# Congressmen Request that the GAO Review For-Profit Institutions, cont.

---

- Whether existing program integrity safeguards are sufficient to protect against waste, fraud and abuse in the federal student aid programs; and
- The extent to which proprietary institutions' revenue is comprised of federal student aid.

# Senator Durbin Speaks Out Against For-Profit Colleges

- On 6/30/2010, Senator Richard Durbin (D-IL) spoke at the National Press Club on the topic of for-profit colleges and preventing financial abuses. He stated that for-profit colleges are the fastest-growing sector in higher education and in his state, enrollment at for-profit colleges has more than doubled in the last decade.
  - He noted that there was a large number of women, many of whom were single parents and minorities;
  - He expressed concern over the amount of debt these students faced;
  - He believed that the increase in enrollments at for-profit colleges was due to the recession, the need for jobs, and the failure of public colleges to meet the demand;

# Senator Durbin Speaks Out Against For-Profit Colleges, cont.

---

- He noted that for-profit colleges offer convenient scheduling, online courses, and faster completion than traditional college; but
- He concluded that easy access to loans and “slick marketing and hard sells” produced the increase in enrollment.

# Senator Durbin Speaks Out Against For-Profit Colleges, cont.

---

Senator Durbin made the following recommendations:

- Congress should tighten up the “90/10” rule;
- Congress should look at whether federal dollars should be used for advertising and marketing;
- Congress should ban companies that acquire accreditation through the purchase of nonprofit colleges; and
- There should be greater scrutiny of private loans that for-profit colleges make to their students.

# Senator Durbin Speaks Out Against For-Profit Colleges, cont.

---

Senator Durbin held forum in IL on 8/31/10 and recommends:

- Having for-profit colleges share risks on student loans;
- Requiring schools to provide more information on costs, accreditation, completion rates and placement rates;
- Ending practice of acquiring accreditation by purchasing non-profit colleges; and
- Examining funding spent by for-profit colleges on marketing and advertisements.

# GAO Releases Results of Investigation of 15 For-Profit Schools 8/4/2010

---

Results of GAO undercover investigation found that for-profit schools:

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

# Senate HELP Committee Holds Second Hearing after Release of GAO report

---

- On 8/4/2010, Senator Harkin held second hearing on for-profit colleges and recruiting practices.
  - Questioned explosive enrollment growth; and
  - Questioned aggressive admissions and marketing practices but schools have high drop-out rates and high default rates.
- Senator Harkin asked if there were sufficient safeguards to prevent fraud and abuse.

# Duncan Responds to Harkin with Plans to Strengthen Oversight

- On 8/13/2010, Secretary Duncan sent 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;
  - ED hired a new Chief Customer Experience Officer to manage consumer protection activities;
  - ED will seek additional resources in FY 2011 budget to increase capacity for and effectiveness of oversight; and
  - ED sent letter to all college presidents reminding them of consequences of fraudulent or deceptive recruitment, admissions, and financial aid activities.

# Senate HELP Committee Holds Third Hearing on Student Success at For-Profit Institutions

- On 9/30/2010, Senator Harkin described report based on analysis of document request to 30 for-profit institutions:
  - Enrollment growth masked high withdrawal rates;
  - Students withdrew at an alarming rate (57% between 7/1/2008 – 6/30/2009);
  - Almost all students take out loans;
  - High enrollment and high withdrawals is driving up amount of federal dollars going to for-profit colleges; and
  - “Raking in record profits” despite “dismal student outcomes.”

# GAO Releases Report on Incentive Compensation

- On 10/7/2010, the GAO released report which examined ED's oversight of the incentive compensation rule. Findings:
  - ED relies on annual independent audits;
  - However, independent auditors do not always document testing and were not provided with specific instructions on how to test;
  - Between 1998 and 2009, ED resolved most incentive comp cases by requiring corrective actions or reaching settlement agreements; and
  - 2002 rules increased ability of ED to prove a violation.
- GAO recommended specifying required procedures for the independent auditors.

# GAO Revises Report on Investigations of 15 For-Profit Colleges on 11/30/2010

---

- On 11/30/2010, GAO released revised 8/4/2010 report on its undercover investigation of marketing practices at for-profit colleges:
  - Senator Harkin (D-IA) says that the revisions “do not change the substance of the report;” and
  - Senator Enzi (R-WY) says reissued report raises questions about the quality and rigor of the investigation.

# Issa Investigates GAO Investigators on GAO Report on For-Profit Schools

---

- On 1/18/2011, House Oversight Chairman Darrell Issa (R-CA) began an investigation of GAO after GAO issued revised report on for-profit colleges.
- On 2/1/2011, a bipartisan letter was sent to GAO questioning role of GAO in investigating for-profit colleges.
- On 3/9/2011, Greg Kutz, who headed the GAO investigation, was reassigned.

# APSCU Files Lawsuit Against Department of Education to Stop Unlawful Regulations

---

- On 1/21/2011, APSCU filed a lawsuit against the Department of Education to block certain provisions in program integrity regulations:
  - State authorization regulations force states to adopt to particular regulatory regimes;
  - Incentive compensation regulations contradict will of Congress; and
  - Misrepresentation regulations permit ED to impose severe penalties on schools for inadvertent, insignificant, or innocent statements, including third-party advertisers and marketing partners.

# Senate HELP Committee Schedules Fourth Hearing on 3/10/2011

---

- Senator Harkin speaks on Senate floor on 2/8/2011 on for-profit sector and describes his on-going investigation of for-profit sector and their misleading recruiting tactics.
- Senator Harkin schedules fourth hearing on 3/10/2011 to examine for-profit colleges and growth.

# House Education Committee and Subcommittee on Higher Education Hold Hearings on Program Integrity Rules

- On 3/1/2011, Committee Chair John Kline (R-MN) held first hearing to examine administrative burden of federal regulations on K-12, colleges and universities. A witness said that “every diversion or distraction from these primary purposes [of educating students] weakens our best attempts to achieve those ends.”
- On 3/9/2011, Committee Chair Kline held hearing on the Department of Education’s FY 2012 budget proposals. While the focus was on K-12, Under Secretary Martha Kanter was asked about the proposed gainful employment rules. She responded that ED had received over 90,000 comments and the rules would be out “soon,” and the final rules would be reasonable and would decrease default rates and increase graduation rates.

## House Education Committee and Subcommittee on Higher Education Hold Hearings on Program Integrity Rules, cont.

---

- On 3/11/2011, Subcommittee Chair Virginia Foxx (R-NC) held a hearing that examined the potential impact on students and schools because of the expansion of the state authorization requirements and the definition of credit hour. Chairman Foxx asserted that she opposed the rules and recommended that more time be spent on streamlining the federal government's role in higher education rather than moving forward with burdensome regulations.

# House Education Committee and Subcommittee on Higher Education Hold Hearings on Program Integrity Rules, cont.

---

- On 3/17/2011, Committee Chairman Kline held hearing on the proposed gainful employment rules. Republicans and Democrats generally agreed with witness who asked why the federal government would, at this time with high unemployment, seek to implement a rule that would impact job placement in fast-growing occupations. “The Department could not have contrived a more anti-student and thereby anti-employer and anti-taxpayer proposed rule.”

# Durbin and Webb Seek Information on Military Assistance to For-Profit Colleges

- On 8/4/2010, Senators Dick Durbin (D-IL) and Jim Webb (D-VA) asked the Secretaries of VA and Defense for detailed information on how military tuition assistance program funding is being spent, specifically at for-profit colleges.
- 40% of \$580 million in military tuition assistance programs went to for-profit colleges in 2009-2010.
- Members expressed concern that distance education programs, especially those offered by for-profit colleges, may not be the best use of federal funds.
- Subcommittee Chairman Vic Snyder (D-AR) suggested revising 90/10 rule to count military assistance toward 90% rather than 10%.

# The Oversight and Investigations Subcommittee of the House Armed Services Committee Holds Hearing on 9/22/2010 on Military Assistance

---

- On 9/22/2010, the House Subcommittee on Armed Services Committee held hearing to examine Department of Defense's oversight of for-profit colleges and distance education.
  - About 70% of the \$580 million in military tuition assistance goes to distance education programs;
  - About 40% of the 70% goes to for-profit colleges; and
  - Chairman Vic Snyder (D-AR) praised the method of delivering education via distance education; however, he noted problems with for-profit colleges, in terms of quality, cost, student employability, and aggressive marketing.

# The Oversight and Investigations Subcommittee of the House Armed Services Committee Holds Hearing on 9/22/2010 on Military Assistance, cont.

---

- Chairman Snyder recommended that the 90/10 rule be revised to count military assistance towards 90%, rather than 10%.

# Harkin Releases Report Showing Growth in VA and DoD Education Funds at For-Profit Colleges

---

- On 12/9/2010, Senator Tom Harkin (D-IA) released a report on dramatic growth of military benefits at for-profit colleges:
  - Harkin has concerns about whether for-profit colleges view education for service members as being incidental to ensuring a “robust profit for their company;” and
  - VA and DoD benefits are attractive because military benefits count toward 10% in 90/10 calculation.

# Senators Harkin and Carper Highlight Findings of GAO Report on DoD's Tuition Assistance Program at 3/2/2011 Hearing

- On 3/2/2011, Senator Tom Carper (D-DE) held hearing on review of DoD's Tuition Assistance Program in GAO report issued on 3/2/2011:
  - DoD Military Tuition Assistance Program provided \$517 million to 377,000 service members in FY 2000;
  - GAO review did not include distance education courses which account for 71% of courses in FY 2009;
  - Without proper oversight, GAO believes that institutions that receive DoD funds could engage in “improper or questionable marketing practices;” and
  - GAO Recommends:
    - A systematic risk-based oversight approach;

# Senators Harkin and Carper Highlight Findings of GAO Report on DoD's Tuition Assistance Program at 3/2/2011 Hearing, cont.

---

- An increased accountability in its education quality review process; and
  - A centralized system to track complaints.
- Senator Tom Harkin (D-IA) expressed concern about the growth in revenues from military benefits at for-profit colleges, yet, for-profit colleges have high costs, high withdrawal rates and high default rates;
  - Senator Harkin recommended counting military aid in federal share of 90/10;
  - Senator Carper said he was surprised that military assistance was not included in the 90/10 calculation and would consider it; and

# Senators Harkin and Carper Highlight Findings of GAO Report on DoD's Tuition Assistance Program at 3/2/2011 Hearing, cont.

---

- Senator Carper expressed concern that there has been a lack of monitoring of the courses being paid for with military tuition assistance.
- DoD plans to:
  - Provide guidelines and require a Memorandum of Understanding;
  - Develop a centralized tracking system for complaints; and
  - Obtain information from ED on program reviews and accrediting agencies.

# Compromise Tax Deal Signed into Law 12/17/2010

- \$858 billion compromise tax bill extend tax provisions including:
  - An of the above the line college tuition deduction of up to \$4,000 through 2011;
  - An extension of the student loan interest deduction worth up to \$2,500 through 2012;
  - A renewal of a benefit that allows employers to provide up to \$5,250 in tax-free tuition assistance to their employees;
  - A continuation of the American Opportunity Tax Credit that provides a maximum credit of \$2,500 for qualified tuition and related expenses for each eligible student through 2012 replacing Hope Tax Credit; and

# Compromise Tax Deal Signed into Law 12/17/2010, cont.

---

- An extension of a tax provision that allows individuals to contribute up to \$2,000 a year, pre-tax, to Coverdell Education Savings accounts.

# Post-9/11 Veterans Educational Assistance Improvements Act of 2010 Signed into Law

---

- On 1/4/2011, President Obama signed into law the Post-9/11 GI Bill (P.L. 111-377) which includes the following:
  - Creates national baseline on benefits for veterans of \$17,500 instead of maximum payout based on highest in-state public tuition in state;
  - Ties monthly living allowances to veterans' course loads;
  - Revises definition of approved programs to include certificate and diploma programs;
  - Includes distance learning as an approved program of study for living expenses; and

# Post-9/11 Veterans Educational Assistance Improvements Act of 2010 Signed into Law, cont.

---

- Allows the pursuit of programs other than institutions of higher education, including on-the-job training and apprenticeships, flight training and correspondence courses.

# ED Releases Report on 90/10 Calculations

---

- On 2/15/2011, ED issued report to Congress regarding 90/10 calculations for 2008-2009 award year:
  - 8 for-profit institutions have 90/10 calculations greater than 90%; and
  - An additional 257 institutions have 90/10 calculations between 85% and 90%.

# FY 2008 Two-Year Cohort Default Rate Increases to 7%, Up from 6.7%

- On 9/13/2010, ED issued FY 2008 two-year cohort default rates, which increased across all sectors:

Public Institutions	From 5.9% to 6%
Nonprofit Private Institutions	From 3.7% to 4%
For-Profit Institutions	From 11% to 11.6%
National Average	From 6.7% to 7%

# ED Releases Trial Three-Year Cohort Default Rates on 2/4/2011

- Beginning 2014, only three-year cohort default rates will be published (FY 2009, FY 2010, and FY 2011). To assist institutions, on 2/4/2011, ED released trial three-year cohort default rates for FY 2008 (Last year, ED released trial three-year cohort default rates for FY 2005, FY 2006, and FY 2007):

Public Institutions	10.8% (6% two-year for FY 2008)
Nonprofit Private Institutions	7.6% (4% two-year for FY 2008)
For-Profit Institutions	25% (11.6% two-year for FY 2008)
National Average	18.8% (7% two-year for FY 2008)

# ED Issues Correction to Trial 3-Year FY 2008

- On 2/4/2011, ED issued trial 3-year FY 2008 CDR
- On 4/21/2011, ED issued correction to 3-year FY 2008 CDR:
  - Lowers rate by 2.6% to 22.4% for for-profit colleges;
  - Lowers rate by 0.9% to 6.7% for nonprofit colleges; and
  - Lowers rate by 1.1% to 9.7% for public colleges.

---

# Program Integrity Regulations

# Negotiated Rulemaking Ends Without Reaching Consensus on Program Integrity Issues

- Public Hearings: Summer 2009
- Neg Reg: Fall 2009
- NPRM: June 18, 2010
- Final Regulations: 10/29/2010
- Effective Date: 7/1/2011
  - (except for verification – 7/1/2012)
- NPRM: July 26, 2010 (Gainful Employment)
- Final Regulations: Early 2011
  - (Per ED announcement 9/24/2010)
- Effective Date: 7/1/2012

# ED Holds Negotiated Rulemaking Sessions on 14 Program Integrity Issues – ED says Current Regulations Cause Fraud and Abuse

In December 2009, ED introduced 14 issues subject to Neg Reg. The issues are:

- Definition of High School Diploma (Yes)
- Ability-to-Benefit (Yes)
- Misrepresentation of Information to Students and Prospective Students (Yes)
- Definition of a Credit Hour (Yes)
- Agreements between Institutions of Higher Education (Yes)
- Verification of Information included on Student Aid Applications (Yes)

# ED Holds Negotiated Rulemaking Sessions on 14 Program Integrity Issues – ED says Current Regulations Cause Fraud and Abuse, cont.

---

- Satisfactory Academic Progress (Yes)
- Retaking Coursework (Yes)
- Disbursements of Title IV Funds (Yes)
- Incentive Compensation (No)
- State Authorization as a Component of Institutional Eligibility (No)
- Employment in a Recognized Occupation (No)
- Return of Title IV Funds, Term-Based Programs with Modules or Compressed Courses (No)
- Return of Title IV Funds, Taking Attendance (No)

# Program Integrity Regulations

---

- State Authorization
- Credit Hour Definition
- Misrepresentation
- Incentive Compensation
- Definition of High School Diploma
- Return of Title IV – Taking Attendance
- Gainful Employment



# Final Regulations Addressing 13 out of the 14 Program Integrity Issues Published on October 29, 2010

- On June 18, 2010, a Notice of Proposed Rulemaking (NPRM) on the 13 out of 14 program integrity issues that were the subject of negotiations during the months of November 2009 through January 2010 was published in the *Federal Register*. The NPRM only partially addressed the 14<sup>th</sup> issue of “gainful employment.”
- The Department published final regulations on October 29, 2010, with an effective date of July 1, 2011, with some exceptions (i.e., verification).

# 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)

# State Authorization Requirement

---

- 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

---

- 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.

# Institution is Established by Name as an Educational Institution

---

- 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 of a State agency and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate;
    - School must obtain some type of authorization as a postsecondary institution by the State; and

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

---

- A letter issued by the State naming the institution would not satisfy requirements.
- Must comply with any applicable State approval or licensure requirements; and
- 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.
- Note: Per DCL GEN-11-05, a letter issued by state naming institution would not satisfy "other action."

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

- 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 including those offering distance education to residents:
  - 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.
  - But all relevant officials or agencies must be included in an institution's institutional information that is disclosed under §668.43(b).

# State Must Establish Complaint Process, cont.

---

- State must remain responsible for responding to complaints, but may refer it to other entities such as an accrediting agency for final resolution.
- If an out-of-state institution is offering distance education to a State's residents, the institution must provide to its students contact information for filing complaints.

# State Requirements for Distance Education

- If an institution offers education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State:
  - The institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State [**Note:** Institutions were always required to have determined whether State approval was necessary and to have sought approval when required]; and
  - An institution must be able to document to the Secretary the State's approval upon request.

# DCL GEN-11-11 Replaces GEN-11-05 Guidance Regarding State Authorization for Distance Education

---

- ED has heard that schools are encountering challenges in obtaining State authorization for distance education;
- Some States are considering steps to modify or update authorization requirements for the provision of distance education training;
- Institutions say that time and expense could be expended to comply with requirements that may soon change; and
- States may not be prepared to manage a large number of applications for authorization.<sup>59</sup>

# DCL GEN-11-11 Clarifies Enforcement with Regard to the State Authorization of Distance Education Activities

---

- Department will not initiate any action to establish repayment liabilities or limit student eligibility for distance education activities undertaken before 7/1/2014, so long as the institution is making a good faith effort to identify and obtain necessary State authorizations before the date.
- Evidence of good faith efforts by institutions could include one or more of the following:
  - Documentation that an institution is developing a distance education management process for tracking students' place of residence when engaged in distance education;

# DCL GEN-11-11 Clarifies Enforcement with Regard to the State Authorization of Distance Education Activities, cont.

- Documentation that an institution has contacted a State directly to discuss programs the institution is providing to students in that State to determine whether authorization is needed;
  - An application to a State, even if it is not yet approved; or
  - Documentation from a State that an application is pending.
- If a State has no applicable regulation or law, then no action is required (must document per DLC GEN-11-05).
- ED is committed to developing a comprehensive directory of State requirements, which will be available on ED's Web site.

# Effective Date and Extension for State Authorizations

---

Effective July 1, 2011, however,

- An institution may request a one-year extension to July 1, 2012 and, if necessary, an additional one-year extension to July 1, 2013 if the State is unable to provide appropriate State authorization establishing legal authorization for an institution to offer postsecondary education (State should provide minimal level of review); and
- To receive the extension, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply.

# Credit Hour

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

# Why Establish a Credit Hour Definition?

---

- There is no current definition;
- To establish consistent measure of eligibility for Federal funding; and
- 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.

# Definition of Credit Hour

---

- Current Rules: There is no definition of “credit hour” in current regulations.
- 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, cont.

- Credit hour is defined in 34 CFR 600.2 as an amount of work (a “proxy measure of a quantity of student learning”) 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.

# DCL Describes Several Critical Flexibilities in Determining Amount of Credit Hours

---

- The institution determines the amount of credit awarded for student work;
- A credit hour is expected to be a *reasonable approximation* of a minimum amount of work in a Carnegie unit in accordance with commonly accepted practice in higher education;
- The credit hour definition is a minimum standard;
- The definition does not dictate particular amounts of classroom time versus out-of-class student work;

# DCL Describes Several Critical Flexibilities in Determining Amount of Credit Hours, cont.

---

- The credit hour definition does not emphasize the concept of “seat time” as the primary metric but credit hours may be assigned for an *amount of work* represented by verifiable achievement of established learning outcomes;
- In determining the amount of work the institution’s learning outcomes will entail, the institution may take into consideration alternative delivery methods, measurements of student work, academic calendars, disciplines, and degree levels; and
- An institution may adopt different definitions for Federal purposes and for academic needs.

# DCL Provides Guidance for Online Courses (No “Seat Time”)

---

- There is no “seat time” requirement implicit in the definition of credit hour; and
- An institution offering asynchronous online courses would need to determine amount of student work expected in each online course to achieve the course objectives and to assign a credit hour.

# DCL Describes Difference in a Week of Instructional Time and Defining a Credit Hour

---

- Instructional time” is any 7-day period in which one day of regularly scheduled instruction or examination occurs:
  - It does not include vacation time, homework, or periods of counseling or orientation;
  - In a 7-day period, a student is expected to be academically engaged through, for example, classroom attendance, examinations, practica, laboratory work, internships, and supervised studio work;

# DCL Describes Difference in a Week of Instructional Time and Defining a Credit Hour, cont.

---

- In distance education, academic engagement would include submitting an academic assignment; taking an exam, an interactive tutorial, or computer-assisted instruction; attending a study group that was assigned; contributing to an academic online discussion; and initiating contact with a faculty member to ask a question about the academic subject;
- Merely logging into the electronic classroom does not constitute academic engagement; and

# DCL Describes Difference in a Week of Instructional Time and Defining a Credit Hour, cont.

---

- By definition (34 CFR 600.2), “distance education” requires regular and substantive interaction between the students and the instructor.
- “Credit hour” may take into account a student’s homework, research, and other unsupervised student work, which is not considered in determining “weeks of instructional time.”

# Definition of Credit Hour, cont.

---

- 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.

# Definition of Credit Hour, cont.

- Clock-to-Credit-Hour Conversion (34 CFR 668.8(k) and (l)):
  - Required for non-degree programs at any type of institution if each course does not transfer into at least a 2-year degree program.
  - Except in certain cases discussed below, the method of converting clock hours to credit hours is modified using 900 clock hours as the minimum (currently ED uses 720 clock hours).  
*Therefore, a semester hour will be based on 37.5 clock hours and a quarter hour will be based on 25 clock hours.*

# Definition of Credit Hour, 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:*
    - *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.*

# Definition of Credit Hour, cont.

---

- 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;

# Definition of Credit Hour, cont.

---

- Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education;
- Per DCL, accrediting agencies are not required to mandate specific policies with regard to assigning credit hours;
- 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

# Definition of Credit Hour, cont.

---

- Accreditation reviews occur for initial or renewal of accreditation; however, during the interim, an institution is held responsible and accountable for meeting definition.
- Reasons: A credit hour is a unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an institution. *It is necessary for measuring eligibility for federal funding.*

# 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 investigation that found deceptive recruiting practices;
- FTC guidelines against deceptive advertising only applies to non-degree institutions; 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.

# Actions ED may Consider Taking in a Finding of Substantial Misrepresentation

---

- Institutions will be provided “reasonable notice and opportunity for a hearing;”
- Institutions may be provisionally certified;
- Institutions may be terminated for cause; or
- Institutions may be L, S, or T.

---

# Incentive Compensation

§668.14(b)

(DCL GEN-11-05)

# Why Revise the Incentive Compensation Provisions?

---

- Complaints from consumers about aggressive sales techniques; and
- Improved compliance.

# Institutional Requirement

---

- School will not provide a commission, bonus or other incentive payment based, **in any part**, directly or indirectly, on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding awarding Title IV funds.
- Does not apply to recruitment of foreign students who reside in foreign countries and who are not eligible for Title IV aid.

# What do the New Rules do?

---

- Removed safe harbors:
  - Non-Title IV programs – Institutions manipulated system where students were later enrolled in Title IV programs;
  - Arrange contracts between institution and employees – Ultimately, compensation based on enrollment;
  - Successful completion of program, retention or placement – Indirectly based on enrollment and institutions have incentivized based on enrollments in shorter and shorter programs;

# What do the New Rules do? cont.

---

- Exemption of managers who do not supervise those in admissions or making financial aid awards – Ban applies to all employees at any higher level with responsibility for recruitment or making financial aid awards (i.e., actions of President)
- Tuition – sharing arrangements with third-parties permitted as long as no person or entity engaged in recruitment or making financial aid decisions;

# What do the New Rules do? cont.

---

- Institutions billed based on number of student files processed are not precluded as long as not based in any part, directly or indirectly, on recruiting enrollment or awarding financial aid.

# What do the New Rules do? cont.

---

- New Definitions:
  - Commission, bonus or other incentive payment means:
    - A sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.
  - Securing enrollments or the award of financial aid means:
    - Activities include contact in any form with a prospective student, such as contact through pre-admission or advising activities, scheduling an appointment, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application.

# What do the New Rules do? cont.

---

- These activities do not include payments to a third-party for student contact information for prospective students, provided such payment is not based on any additional conduct or action by the third-party, such as participation in pre-admission or advising activities, scheduling, or being involved in signing enrollment agreement or financial aid application; or the number of students who apply for enrollment, or are awarded financial aid, etc. [Note – can pay on clicks for students who apply online]

# What do the New Rules do? cont.

---

- Entity or person engaged in student recruitment or making financial aid awards means:
  - Any institution or organization that undertakes recruiting or making financial aid awards; or
  - Any person engaged in any student recruitment or making financial aid awards, and any higher level employee with responsibility for recruitment or admission of students making financial aid awards.

# Questions to Evaluate Bonus Payments

---

- The two-part test can be used to evaluate if a payment is incentive compensation?
  - 1. Whether the payment is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered; and
  - 2. Whether the commission, bonus, or other incentive payment is provided to any person based, in any part directly or indirectly, upon success in securing enrollments or the award of financial aid.

# Questions to Evaluate Bonus Payments, cont.

---

- If the answer to each question is “yes,” the payment would be prohibited.

# What are Examples of Covered Activities?

---

- Recruitment activities, including:
  - Targeted information dissemination;
  - Solicitations to individuals; and
  - Contacting potential applicants or aiding students in filling out enrollment applications.
- Services related to securing financial aid, including completing financial aid applications for prospective applicants.

# What are Examples of Exempt Activities (unless employee or entity is covered employee)?

---

- Marketing activities, including:
  - Broad information dissemination;
  - Advertising programs that disseminate information to potential students;
  - Collecting contact information;
  - Screening pre-enrollment information to determine whether prospective student meets requirements for enrollment; and
  - Determining whether enrollment application is materially complete and decision remains with institution.

# What are Examples of Exempt Activities (unless employee or entity is covered employee)? cont.

---

- Student support services offered after financial aid is allowed to be disbursed, including:
  - General student counseling;
  - Career or financial aid counseling;
  - Online course support; and
  - Academic support services (i.e., tutoring, aimed at retention).
- Policy decisions made by senior executives and managers related to the manner in which recruitment, enrollment, or financial aid will be provided.

# What Types of Payment are Considered Direct or Indirect Payments of Incentive Compensation?

---

- Tuition sharing based on formula that relates to number of students enrolled;
- Profit sharing plans from which distributions are made to individuals based on number of students enrolled;
- Salary adjustments that are incentive payments based on success in securing enrollments or financial aid;
- Payments based on the application of an admissions policy; and
- Bonus or other payments based on success in securing enrollments or financial aid.

# What Types of Payment that are Not Direct or Indirect Payment of Incentive Compensation?

---

- Tuition as a source of revenue from which compensation is paid to an unrelated third party for a variety of bundled services;
- Profit sharing, including 401(k) plans, from which distributions are made on the basis that is neutral;
- Employee benefits plans offered to all employees on a basis that is neutral;
- Cost of living adjustments;
- Compensation adjustments based on seniority;

# What Types of Payment that are Not Direct or Indirect Payment of Incentive Compensation? cont.

---

- Compensation to faculty based on student class size or academic achievement;
- Payments to senior executives for the development of policies that affect recruitment, enrollment, or financial aid;
- Payments based upon securing housing or other student services; and
- Volume driven arrangements based on services that are not recruitment or securing financial aid.

---

# High School Diploma

§668.16(p)

# 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.

# 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.

# 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.

---

# **Return of Title IV Funds**

## **Attendance Requirements**

§§668.22(b)(3)

# Withdrawal Date for a Student who Withdraws From an Institution that is Required to Take Attendance (§ 668.22(b))

---

- **Current Rules:** An institution is required to take attendance if an outside entity (such as an accrediting agency or a State agency) requires the institution to take attendance. If required to take attendance, an institution must use the last date of academic attendance as the withdrawal date.

# When is an Institution Required to Take Attendance?

---

- Final Rules:
  - An outside entity has a requirement that the institution take attendance;
  - The institution itself has a requirement that its instructors take attendance; or
  - The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance or a portion of attendance in the classes of that program.

# If Required to Take Attendance:

---

- For some students, use attendance records for those students;
- For a limited period of time, use attendance records for withdrawals during that limited period of time; and
- On a specific date (census date), not considered to be required to take attendance.

# What is “Academic Attendance” and “Attendance in an Academically-Related Activity”?

---

- Physically attending a class where there is interaction between the instructor and students;
- Submitting an academic assignment;
- Taking an exam, an interactive tutorial, or computer-assisted instruction;
- Attending a study group that is assigned by the institution;
- Participating in an online discussion about academic matters; and

# What is “Academic Attendance” and “Attendance in an Academically-Related Activity”? cont.

---

- Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and
- Does not include activities where a student may be present, but not academically engaged:
  - Living in institutional housing;
  - Participating in the institution’s meal plan;
  - Logging into an online class without active participation; or
  - Participating in academic counseling or advisement.

# What is “Academic Attendance” and “Attendance in an Academically-Related Activity”? cont.

---

NOTE: The determination of academic attendance or attendance in an academically-related activity must be made by the institution, not the student.

# Gainful Employment

§§600.2, 600.4, 600.6,  
668.6 and 668.8  
(GEN-11-10)

# Gainful Employment in a Recognized Occupation

- Current 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 in a Recognized Occupation, cont.

- An institution must annually submit to ED information regarding students enrolled in a program during an award year that leads to gainful employment in a recognized occupation, including:
  - Identifying information about all students (not just Title IV recipients) who enrolled in the program:
    - The Classification of Institutional Program (CIP) code for the program.
  - Identifying information about each student who completed the program during an award year:
    - The Classification of Instructional Program (CIP) code for the program;
    - The Date the student completed the program;

# Gainful Employment in a Recognized Occupation, cont.

---

- The amounts the student received from *private educational loans and institutional financing plans that are owed after completing the program*; and
- Whether the student matriculated to a higher credential program at the institution, or if available, 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 that are enrolled in the program at the end of each award year and identifying information for those students.
- An institution must report the information:
  - No later than October 1, 2011 for information from the 2006-2007 award year to the extent that the information is available;

# Gainful Employment in a Recognized Occupation, cont.

---

- No later than October 1, 2011 for information from the 2007-2008 through 2009-2010 award years; and
- No earlier than September 30, but no later than the date published in the *Federal Register* for information from the most recently completed award year.
- If information is not available, the institution must provide an explanation.
- Institutions will use existing Enrollment Reporting Process through NSLDS.

# Gainful Employment in a Recognized Occupation, cont.

- An institution is required to disclose the following information *prominently* on its program website:
  - The specific occupations (by names and SOC codes) that its programs prepare students to enter, along with links to occupational profiles on the Department of Labor's O\*NET;
  - If the number of occupations to the program, as identified by entering the program's full 6-digit CIP code on the O\*NET crosswalk at <http://online.onetcenter.org/crosswalk/> is more than 10, the institution may provide the Web links to a representative sample of the identified occupations (by name and SOC code) for which graduates typically find employment.

# Gainful Employment in a Recognized Occupation, cont.

- The on-time graduation rate (normal time per catalog) of students entering a program;
  - On-time graduation is defined as:
    - Determining the number of students who completed the program during the most recently completed award year;
    - Determining the number of those who completed the program in normal time; and
    - Dividing the number of those who completed the program within normal time by the total number who completed the program and multiply by 100.
    - Transfer students are held to the same standard; and
    - Internal transfers are held to the original program length.

# Gainful Employment in a Recognized Occupation, cont.

---

- The cost of each program including tuition and fees, room and board, and typical costs for books and supplies (plus information or link to other costs);

# Gainful Employment in a Recognized Occupation, cont.

- Beginning July 1, 2011, the placement rate for students completing each of those programs *as determined by state, accrediting agency or NCES, when available*; and
- The median loan debt incurred by students who completed each program, identified separately as Title IV loan debt and debt from private educational loans and institutional financing plans.
- This disclosure must be available on the promotional materials conveyed to prospective students and on its website (homepage of its program website).

# Gainful Employment in a Recognized Occupation, cont.

---

- Provide prominently in a simple and meaningful manner on the home page of its program Website, and provide a prominent and direct link on any other Web page containing general, academic or admissions information about the program, to the single program Website with all of the required information;
- Information on program Website should 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; and

# Gainful Employment in a Recognized Occupation, cont.

---

- Use the disclosure form issued by the Secretary.

# Gainful Employment in a Recognized Occupation, cont.

---

- Reasons: The Department plans to use this information to assess the outcomes of programs that lead to gainful employment in a recognized occupation.

# Gainful Employment in a Recognized Occupation, cont.

---

The following provision is included with another set of final regulations published on 10/29/2010, which go into effect on 7/1/2011:

## Additional programs:

- An additional program:
  - Has different CIP code;
  - Has same CIP code as another program but leads to a different degree or certificate; or
  - Accrediting agency determines it to be a different program.

# Gainful Employment in a Recognized Occupation, cont.

- Before an institution offers an additional program, the institution must provide:
  - Notice to the Secretary when introducing a new program at least 90 days before the first day of class and provide:
    - Local market needs or regional /national for online programs;
    - Wage analysis information;
    - Provide any input from advisory committees, businesses, public or private oversight agencies or ties with governmental agencies;
    - Approval by accreditor; and
    - Date of first day of class.
  - If the Department has concerns, additional information will be requested at least 30 days before first day of class. Otherwise, the school may proceed to offer the program.

# ED Releases NPRM on Gainful Employment on 7/26/2010

- ED would define whether a program successfully prepares students for gainful employment using a two tests.
  - Comments were due: 9/9/2010 (Over 80,000)
  - ED notice 9/25/2010 announced delay in publication of final regulations until early 2011.
  - Effective date: 7/1/2012 as planned.
- ED estimates that:
  - 5% of all programs would not be eligible; and
  - 55% of all programs would be required to warn their students about high debt-to-earnings ratios.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Based on these two tests, a program may be eligible, have restricted eligibility, or be ineligible:
  - “Fully eligible programs” would need to have at least 45% of their former students paying down the principal on their federal loans OR their graduates would need to have a debt-to-earnings ratio of less than 20% of discretionary income OR 8% of average annual earnings. The programs would have to disclose their repayment rates and debt-to-earnings ratios unless they pass both these tests;

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- “Ineligible programs” would have less than 35% of their former students paying down the principal of their federal loans AND their graduates would have a debt-to-earnings ratio above 30% of discretionary income AND 12% of average annual earnings. An ineligible program may not offer student aid to new students and can provide one additional year of aid to current students, provided that it warns them about the high debt-to-earnings ratio;
- “Restricted programs” are programs that are not fully eligible or ineligible. Restricted programs are subject to limits on enrollment growth and the institutions must demonstrate employer support for the program and warn consumers and current students of high debt levels.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

- The use of two measures is a “balanced approach that gives institutions flexibility in how to demonstrate that they prepare students for gainful employment.” The debt-to-income ratio provides a measure of program completers’ ability to repay their loans. The use of discretionary income recognizes that borrowers with higher incomes can afford to use a larger share of their income to loan repayments, while the use of annual income would benefit programs whose borrowers have lower earnings. The loan repayment rate is a measure of whether program enrollees are repaying their loans, regardless of whether they completed the program.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

Debt Burden				
Repayment Rate		Above 12% of Total Income AND Above 30% of Discretionary Income	Neither Other Column	Below 8% of Total Income OR Below 20% of Discretionary Income
	Above 45%	Fully Eligible	Fully Eligible	Fully Eligible
	35% to 45%	Restricted	Restricted	Fully Eligible
	Below 35%	Ineligible	Restricted	Fully Eligible

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

## ■ Debt-to-Income ratio

- A 3-year Period (3YP) – Period covering the 3 most recently completed award years prior to the earnings year;
- Earnings year – most recent calendar year; and
- Discretionary income – difference between average annual earnings and 150% of the Poverty Guideline for a single person.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

- Loan Repayment Rate =

OOPB of LPF plus OOPB of RPL

OOPB of all loans for students attending the program

- Original Outstanding Principal Balance (OOPB) is the amount of the outstanding balance on FFEL or Direct Loans owed by students who attended program including capitalized interest on the date loans entered repayment. *OOPB of all loans that entered repayment for the prior four fiscal years;*

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Loans Paid in Full (LPF) is the amount of loans to students who attended program that have been paid in full. A loan paid off in consolidation is not counted as paid in full until the consolidation loan is paid in full. The OOPB of LPF in the numerator of the ratio is the total amount of OOPB for these loans;
- Reduced Principal Loan (RPL) is the loan where payments made by a borrower during the most recently completed FY reduced the outstanding principal balance of that loan from the beginning of that FY. Loans whose payments for the FY qualified for the Public Service Loan Forgiveness program are included. The OOPB of the RPL in the numerator of the ratio is the total amount of OOPB for these loans;

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Exclusions: The following are excluded from the numerator and denominator:
  - The OOPB Of borrowers on an in-school deferment or a military-related deferment status; and
  - The OOPB of borrowers entering repayment after March 31 of the most recent FY.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Debt Measures: The Secretary determines annually for each program whether the annual loan payment is less than the discretionary income and earnings threshold:
  - Annual loan repayment: The Secretary determines the median loan debt of students who completed the program at the institution during the 3YP and uses this amount to calculate an annual loan repayment based on a 10-year repayment schedule and the current annual interest rate on Direct Unsubsidized Loans. If data are available, the Secretary will also calculate the median loan debt of students who completed the program during the P3YP.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- In general, loan debt includes Title IV loans other than Parent PLUS loans and any private educational loans or debt obligations arising from institutional financing plans. *Loan debt does not include any debt obligations arising from student attendance at prior or subsequent institutions unless under common ownership or control.*
- Average annual earnings: The Secretary obtains this information from a Federal agency of the students who completed the program during the 3YP. P3YP data are used if the institution can show that the students completing the program experience a significant increase in earnings after an initial employment.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Debt warning disclosure: On or after July 1, 2012, an institution must provide a warning if the loan repayment rate is less than 45% AND the debt-to-income ratio is greater than 20% of discretionary income or 8% of average annual earnings. The Secretary will notify the institution that it must include a prominent warning in its promotional, enrollment, registration, and in all other materials, and in all admissions meetings with prospective students, and disclose to current and prospective students the most recent loan repayment rate and most recent debt measures.

# ED Releases NPRM on Gainful Employment on 7/26/2010, cont.

---

- Restricted programs: If an institution's program(s) is placed on restricted status, it must annually provide to the Secretary employer affirmations and make the debt warning disclosures to its students.

# Test 1: Gainful Employment Loan Repayment

---

- 4 most recent fiscal years for the 2012 annual repayment rate – 2008-2011 (loans that went with repayment 10/1/2007 to 3/31/2011)
- 150 borrowers:
  - 5 repaid (numerator & denominator)
  - 25 in school or military deferment (not included)
  - 15 in default – no payments most recent fiscal year (denominator)
  - 20 in income-based repayment – principal not paid (denominator)
  - 10 forbearance or deferment (denominator)
  - 70 in repayment (numerator & denominator)

# Test 1: Gainful Employment Loan Repayment, cont.

$$\frac{\$10,000 (5) + \$490,000 (70)}{\$1,000,000}$$

$$\frac{\$10,000(5) + \$130,000 (15) + \$300,000(20) + \$70,000 (10) + \$490,000 (70)}{\$1,000,000}$$

$$\frac{\$500,000}{\$1,000,000}$$

$$= 50\%$$

- Threshold: Gold standard – 45% and minimum 35%  
Example: Above gold standard and would be eligible regardless of the debt-to-income-test.

# Test 2: Gainful Employment Debt to Income Ratio

---

- Discretionary Income Measure:
  - Annual Loan Repayment < Discretionary Threshold x (Average Annual Earnings – (1.5 x Poverty Guideline))
- Annual Earnings Measure:
  - Annual Loan Repayment < Earnings Threshold x Average Annual Earnings
- Annual Loan Repayment = 10-year repayment plan for the median loan debt of students who completed the program during most recent award years before the earnings year (most recent calendar year) at 6.8% interest.

# Example for Discretionary Income Measure

- For 2010, Poverty Guideline: \$10,830
- Actual Average Earnings for completers: \$20,000
- Annual Loan Repayment: \$1,000
- Gold Standard – Threshold is 20%:
  - $.20 \times (\$20,000 - (1.5 \times \$10,830)) = \$751$
  - \$1,000 is not less than gold standard.
- Minimum Standard – Threshold is 30%:
  - $.30 \times (\$20,000 - (1.5 \times \$10,830)) = \$1,126.50$
  - 1,000 is less than the minimum standard

# Example for Annual Earnings Measure

---

- Gold Standard – Threshold is 8%
  - $.08 \times \$20,000 = \$1,600$
  - \$1,000 is less than the gold standard so less than minimum standard

Questions??



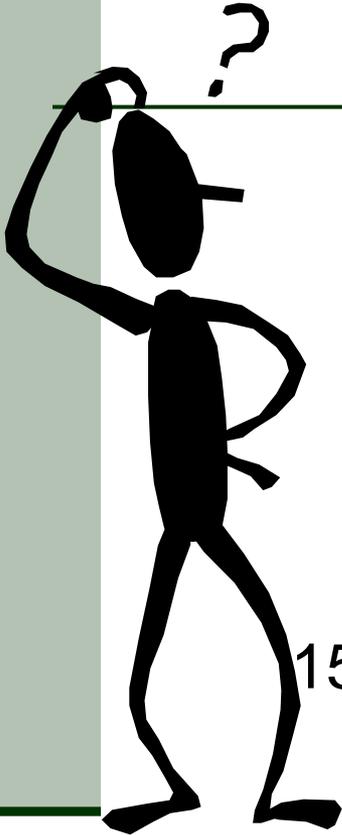
Sharon H. Bob, Ph.D. – [Sharon.Bob@ppsv.com](mailto:Sharon.Bob@ppsv.com)

Powers Pyles Sutter & Verville PC

1501 M Street NW, Seventh Floor | Washington, DC  
20005

tel 202.466.6550 | fax 202.785.1756

**May 3, 2011**



# Sharon H. Bob, Ph.D.



## Practice Areas:

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

## Member:

- NASFAA
- CCA

## Education:

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

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

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

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

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