ABHES Annual Conference

Digging Deeper:

Incentive Compensation,
Gainful Employment, 90/10

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Gainful Employment

Gainful Employment

I. Overview of the Reporting and Disclosure Rules
II. Interaction with New Misrepresentation Regulations
III. Examples and Questions

I. Overview of the Reporting Rule

Report annually to ED on each student who enrolls:

1. Identity of the student;
2. The student's program CIP code;
3. For completers:
   - Completed program CIP Code
   - Date program completed (probably to verify on-time rate calc)
   - Private loan amounts
   - Institutional loan/financing plan amounts (any amounts owed after graduating)
   - Whether student began another program at same school

I. Overview of the Reporting Rule

Report annually to ED on certain Title IV-eligible program data:

1. Programs offered and corresponding CIP codes
2. Number of students enrolled
3. Identifying information for each student

I. Overview of the Reporting Rule

Period of time measured is the award year

Report for award years 2006-07, 2007-08 and 2008-09 due **October 1, 2011**

For missing data (2006-07 award year only), school must explain lack of data. No exceptions for 2007-08 or 2008-09.

I. Overview of the Disclosure Rule

To whom: Prospective Students

When: Made to prospective student, so prior to enrollment

Where: "promotional materials [the school] makes available to students" & each program's website landing page

* also, other program web pages must have prominent link to disclosures

I. Overview of the Disclosure Rule

How made:

- Prominently

- Simple and Meaningful

* In other words, law firm-style fine print disclaimers won't do

* Note: applies to web disclosures only, not "promotional materials"

I. Overview of the Disclosure Rule

How made:

- Open format that can be retrieved, downloaded, indexed and searched by commonly used web search applications.
- Platform-independent, machine-readable, and available without restrictions that would impede use.

* Note: Applies to web disclosures only.

I. Overview of the Disclosure Rule

How made:

- When published, use the disclosure form proscribed by ED.

* Note: Applies to <u>both</u> web and "promotional materials" disclosures.

* Due to OMB forms process, it will likely be a year or more before ED disclosure form created and approved for use.

I. Overview of the Disclosure Rule

What to disclose:

- The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET.
  - If number of occupations related to program, according to O*NET (*http://online.onetcenter.org/crosswalk/),* is more than 10, can provide Web links to a representative sample of O*NET's occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program
  - * If less than 10, required to display all of them?

I. Overview of the Disclosure Rule

What to disclose:

- On-time graduation rate
  - "normal time" completers
  - Divided by
  - Total completers during award year

I. Overview of the Disclosure Rule

What to disclose:

- On-time graduation rate- "normal time" completers
  - "Normal" time is time published in catalog
  - Clock starts on first day of class for the program
  - Transfer credits ignored
  - Clock does not restart if student transfers programs within an institution

I. Overview of the Disclosure Rule

What to disclose:

- On-time graduation rate- total completers
  - Total completers means what it says; cohorts ignored
  - Time period is the award year

I. Overview of the Disclosure Rule

What to disclose:

- The tuition and fees for completing within normal time, typical costs for books and supplies, and room and board if applicable.
- The placement rate for the program, if required to calculate placement rate by state or accrediting agency
- The median loan debt incurred by students who completed over the last three years (separately for federal and private loan debt)
    - This is provided to you based on your annual reports and ED data

II. Interaction with Misrepresentation

A. "Substantial misrepresentation" not a substantial misrepresentation at all

   -misleading

   -tendency to confuse

   -spin, concealment, downplay

II. Interaction with Misrepresentation

B. Applies to "employability of its graduates"

-Placement

-Completion

-Licensing exam pass rates

III. Examples & Questions

A. What is a "promotional material"

-Radio, TV, billboard ads?

-Student info packets, enrollment materials?

-Catalog, handbook?

III. Examples & Questions

B. What if state licensing board and ABHES require calculation of placement rate, but use different methodologies?
   - Disclose both?
   - Pick one? The more favorable one?

90/10 Calculation

90/10 Calculation

Future Changes

1. Expiration of post-ECASLA loans as non-Title IV funds on **June 30, 2011**

    a) Refunds of pre- and post- ECASLA loans should be attributable to these loans in the same percentage as they were disbursed

90/10 Calculation

Future Changes

1. Expiration of post-ECASLA loans as non-Title IV funds on **June 30, 2011**

   b) Example - $4,000 (2/3) and $2,000 (1/3) disbursed, refund of $1,200 would be attributed 2/3 ($800) to the pre-ECASLA portion and 1/3 ($400) to the post-ECASLA portion

90/10 Calculation

Future Changes

2. Expiration of ability to count NPV or 50% of institutional loans made as non-Title IV funds for 90/10 purposes on **June 30, 2012**
   a) Must be a bona fide loan evidenced by a promissory note, collection process, and interest charges
   b) Must credit a student's account with the full amount of the loan made and then set up a separate note receivable account

90/10 Calculation

Solutions

1. Implement qualified non-Title IV programs to generate other non-Title IV revenue
   a) Must be approved by state; or
   b) Must be approved by accrediting agency; or
   c) Must lead to an industry-recognized certification

90/10 Calculation

Solutions

2. Increase collection efforts on tuition amounts not covered by Title IV

3. Get your students in the habit of paying something every month, even if it is a nominal amount. It will add up towards your 90/10 ratio and prepare them for repayment on their loans

90/10 Calculation

Solutions

4. Any credit balances on student accounts that were created by Title IV funds should be subtracted from Title IV funds in the 90/10 calculation
5. Seek other funding from state or local government programs

New 90/10 Disclosures

Federal Register dated October 29, 2009

1. Appendix C – detailed disclosure of 90/10 revenue by source
2. Department of Education will be reviewing and comparing data reported to internal records such as G5
3. Disclosure will allow the Department to identify those schools that they anticipate will have a problem with 90/10 when the post ECASLA loans revert back to Title IV funds

New Audit Guide

Drafted to be effective for years beginning on or after July 1, 2010 (FYE 6/30/11 or after)

1. Requires school to compile data and calculate 90/10 ratio. May not be performed by the auditor
2. Requires auditor to cite a material weakness in the audit report if the school is not able to perform the calculation
3. Requires the auditor to cite a finding if they find significant variances in the 90/10 calculation as provided by the school

Incentive Compensation

Incentive Compensation

I. Overview of the Two-Part Test
II. Areas of Significant Departure from Safe Harbors
III. Paying the Price: Sanctions
IV. Examples and Hypotheticals

I. Overview of the Two-Part Test

A. New Standards Replacing Safe Harbors: compensation decisions evaluated under a two-part test:

(1) Whether payment is a "commission, bonus or other incentive payment," i.e., anything of value given in exchange for services?

(2) Whether payment is based directly or indirectly on success in enrollments or financial aid awards?

I. Overview of the Two-Part Test

B. Who is Covered by New Regulations?

(1) All school employees or entities engaged in any student recruitment or admission activity or in making decisions about award of financial aid

(2) Any higher level employees with responsibility for recruitment or admission of students or making decisions about awarding of federal aid.

I. Overview of the Two-Part Test

C. What Activities Are Covered?

(1) Securing enrollments or Title IV aid awards includes "activities [from pre-admission] <u>through</u> … <u>completion</u> of…educational <u>program</u>" for "admission" or "matriculation"

* Implies attendance & SAP cannot be compensation factors

II. Departures from Safe Harbors

(1) <u>Setting Salaries for Covered Persons</u>

(a) Salaries can be "merit" based, <u>but</u> success in covered activity <u>cannot</u> be part of "merit"

(b) <u>Permissible factors</u> include:

(i) levels of job responsibility,

(ii) seniority or length of employment, and

(iii) a "variety of <u>standard evaluative factors</u>" such as ones already identified by schools under the current first safe harbor.

II. Departures from Safe Harbors

What merit-based factors for a recruiter don’t relate to success in securing enrollments?

- Results of prospective student surveys
- Supervisor evaluations of communication skills, program knowledge, professional demeanor, reliability, teamwork, honesty candor

II. Departures from Safe Harbors

Merit-based factors to avoid:

- "Efficiency" and "effort"
  - Potential for subterfuge is too great (per DLL)
- Academic success of enrolled students

II. Departures from Safe Harbors

* Multiple upward salary adjustments over 12 months may be seen to "create compensation" for success in covered activity

* Promotions/demotions cannot be based on success in covered activity.

* Any bonuses based on <u>retention</u>, <u>completion</u> or <u>placement</u> are prohibited

II. Departures from Safe Harbors

(2) "Profit-sharing payments [permitted] so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds."

- Does ED really mean that?

II. Departures from Safe Harbors

(3) Lead Generator /Services Agreements:

- Can pay per lead for contact information, but cannot pay amounts based on student response, e.g., visits, completing apps, enrolling, starts, etc., or overall volume of student action.
- Click-through pay OK, if not enrollment based
- Service agreements with tuition revenue splits are permissible as long as no covered person or entity compensated for covered activity

II. Departures from Safe Harbors

(4) Owner Dividends – still permissible if based solely on equity ownership.

(5) Student gifts- dead

(6) Graduation bonuses- dead

II. Departures from Safe Harbors

(7) Ineligible Students/Programs. Incentive comp ban applies to both Title IV-eligible programs and non-Title IV-eligible

* once you put your hand in the Title IV purse, you get all the strings that come with it

* only exception is recruiting of foreign students

II. Departures from Safe Harbors

(8) Corporate Training. Viewed as a non Title IV-eligible program, so dead (maybe?)

* ED concedes that some recruiters who arrange contracts between employers and a school might permissibly be paid incentive comp

* will need further guidance (and ED knows it)

III. Paying the Price - Sanctions

A. LS&T Actions: Possible but unlikely

In October 2010 GAO Report, FSA noted it has not attempted to terminate Title IV eligibility of any school due to resources needed for likely legal challenge

III. Paying the Price - Sanctions

B. Provisional Certification: violations considered flagrant could lead to downgrading of PPA

C. HCM2- reimbursement funding – DANGEROUS

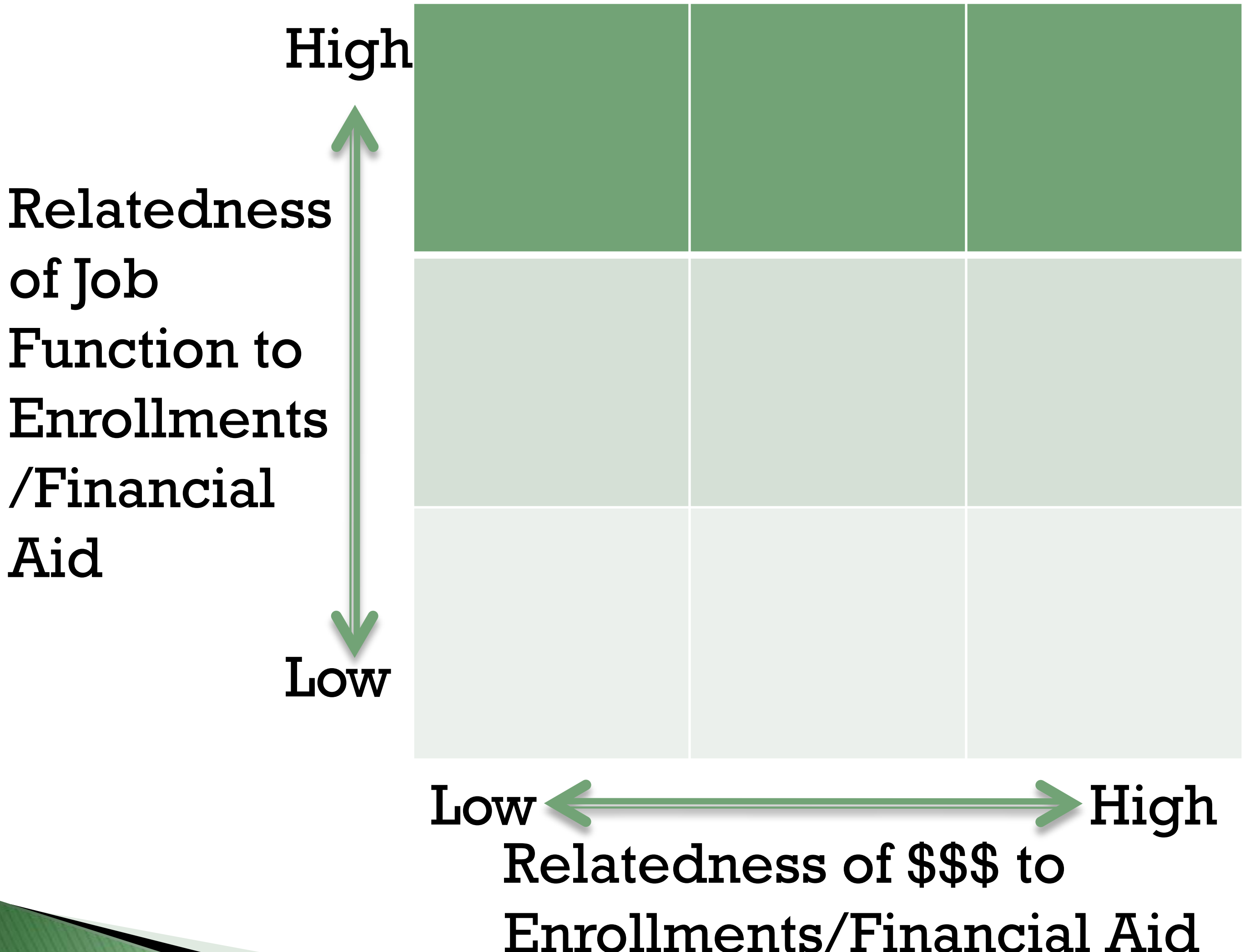
D. Private/State Enforcement: qui tam cases, class actions, state investigations, program reviews, OIG referrals, more audit findings & follow up by FSA

IV. Examples & Hypothetical Scenarios

A. Owner/executive compensation

Small school in West Virginia. Office staff consists of a few recruiters, a financial aid person and the owner (who also is the President of the school and its director of admissions). School is a sub S-corp.

The LeFevre-Keller Matrix:
A Framework for Analysis



The LeFevre-Keller Matrix:
A Framework for Analysis

Relatedness of Job Function to Enrollments/Financial Aid

	None	Indirect	Direct
Direct			
Indirect			
None			

Relatedness of $$$ to Enrollments/Financial Aid

The LeFevre-Keller Matrix:
A Framework for Analysis

Relatedness of Job Function to Enrollments/Financial Aid

	None	Indirect	Direct
Direct			Definitely Not OK
Indirect			
None	OK		

Relatedness of $$$ to Enrollments/Financial Aid

IV. Examples & Hypothetical Scenarios

A. Owner/executive compensation

Small school in West Virginia. Office staff consists of a few recruiters, a financial aid person and the owner (who also is the President of the school and its director of admissions). School is a sub S-corp.

IV. Examples & Hypothetical Scenarios

A. Owner/executive compensation

Small school in West Virginia. Office staff consists of a few recruiters, a financial aid person and the owner (who also is the President of the school and its director of admissions). School is a sub S-corp.

Tax distributions (which are profit-generated, of course)?

Profit distributions?

IV. Examples & Hypothetical Scenarios

A. Owner/executive compensation

Multi-campus school in Texas with a Chief Compliance Officer who is former regulatory attorney from a mid-sized law firm. Clause in Chief Compliance Officer's executive employment contract:

"In addition to the salary provided for in Section 4(a)(i), Company shall pay Executive an annual bonus equal to $100 per student enrolled during the Company's fiscal year."

IV. Examples & Hypothetical Scenarios

B. Third-party compensation (i.e., lead gen)

Lead generation company, Biz-E-Biz, sells leads on a CPL basis. Biz-E-Biz never contacts the student by email, chat or otherwise, but simply purchases contact information from a data aggregator.

IV. Examples & Hypothetical Scenarios

B. Third-party compensation (i.e., lead gen)

Lead generation company, Go2College.com, sells leads on a CPL basis. Go2College.com has website that advertises schools in banner ads on the side and is designed to get prospective students to indicate general interest in a particular area of education by filling out a web form.

IV. Examples & Hypothetical Scenarios

C. Recruiter compensation

Mid America School of Nurse Practitioners pays its director of admissions (who supervises recruiting activities) a fixed salary, but adjusts her pay annually based on performance.

Twice in one year?

What is "performance" for a director of admissions or recruiting personnel?

IV. Examples & Hypothetical Scenarios

D. Tax-qualified compensation (i.e., ERISA benefit plans like a 401(k))

School pays recruiting personnel on a fixed salary basis. School also has a 401(k) with a profit-sharing feature in which the employer can elect each year to give a fixed percentage of compensation out of company profits to employee participants in the plan. Recruiting personnel are permitted to participate in the 401(k) plan.

IV. Examples & Hypothetical Scenarios

E. How about your school's compensation arrangements?

The LeFevre-Keller Matrix:
A Framework for Analysis

Relatedness of Job Function to Enrollments/Financial Aid	None	Indirect	Direct
Direct	OK	Not OK*	Definitely Not OK
Indirect	OK	Probably OK	Probably Not OK
None	OK	OK	OK

Relatedness of $$$ to Enrollments/Financial Aid

* Possible no-action position for profit-sharing feature of tax-qualified retirement plan offered to all employees

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