Maintaining Compliance with New DOE Regulations and 90/10 Update

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Topics

- 90/10 Update
- Incentive Compensation
- Misrepresentation
- State Authorization
- New Program Approvals and Disclosures
- Satisfactory Academic Progress

90/10 – The Basics

34 CFR 600.5 prescribes the following formula

Title IV program funds the Institution used to satisfy it's students' tuition, fees and other Institutional charges

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The sum of revenues, including Title IV program funds, generated by the Institution from tuition, fees and other institutional charges for students enrolled in eligible programs (as defined in 34 CFR 668.8) and activities conducted by the Institution, to the extent not included in tuition, fees and other Institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs

Higher Education Opportunity Act of 2008

Adjusts formula at 34 CFR 600.5 as follows:

- Includes revenue from tuition, fees, and other Institutional charges for students enrolled in programs eligible for Title IV program funds **and** programs that are not eligible for Title IV program funds as long as those programs are approved and licensed by the State, accredited or provides an industry-recognized credential or certificate

- If certain specified conditions are met, Institutional loans, from July 1, 2008 to June 30, 2012, may be deemed revenue on the accrual basis:
  - Net Present Value, or
  - 50% of the total amount of loans

Higher Education Opportunity Act of 2008

Adjusts formula at 34 CFR 600.5 as follows:

- Institutional scholarships may be deemed revenue if they are in the form of monetary aid or tuition discounts, are based on academic achievement or financial need, disbursed from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or income earned on those funds
- The proceeds of Unsubsidized loans that exceed the loan limits which were in effect on May 6, 2008, and received by a student on or after July 1, 2008, but before July 1, 2011

Higher Education Opportunity Act of 2008

Adjusts formula at 34 CFR 600.5 as follows:

- FWS funds can be included in revenue if they are used to satisfy Institutional charges
- Provides additional guidance on types of funding that cannot be included in revenue:
  - FWS program funds (see above exception)
  - LEAP program funds
  - Institutional matching funds
  - Title IV program funds that are required to be refunded or returned
  - Any amount charged for books, supplies, and equipment, unless the Institution includes that amount as tuition, fees, or other Institutional charges

Higher Education Opportunity Act of 2008

Provides additional guidance on the "Presumption Rule" and types of funding that overcomes presumption:

- Grant funds from non-Federal public agencies or private sources independent of the Institution
- Funds provided under a contractual arrangement with a Federal, State, or Local government agency for the purpose of providing job training to low-income individuals
- Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code
- Institutional scholarships that count toward the 10 percent revenue requirement

Higher Education Opportunity Act of 2008

Eases penalty for non-compliance

- Failure to comply in year 1 results in "Provisional PPA" for 2 years
- Failure to comply in year 2 results in loss of eligibility to participate in Title IV programs for at least two fiscal years
  - To regain eligibility, it must demonstrate compliance for at least two fiscal years with:
    - State requirements
    - Accreditation requirements
    - DOE financial responsibility requirements

Additional requirements

- Institutions changing from a for-profit to a non-profit are required to comply with the 90/10 revenue test for the first year of its non-profit status
- As of 7/1/2010, Institutions are required to notify ED of non-compliance with the 90/10 revenue test within 45 days of their most recent fiscal year end
- DOE required to publicly disclose identity of schools that fail to meet the 90/10 Revenue test on College Navigator Website and extent to which school failed

Additional requirements – 90/10 Footnote Disclosure

As of 7/1/2010, DOE issued new footnote disclosure requirement to be presented in financial statement audit. It must disclose:

- Percentage of Title IV revenue
- Dollar amount of numerator and denominator
- Detail of individual revenue amounts

Current 90/10 Challenges

- Expiring in June 2011 is the proceeds of Unsubsidized loans that exceed the loan limits (i.e. $2000 loan exception)
- Expiring in June 2012, the Institutional loan net present value exception
- Greater oversight by ED

Can You Avoid A 90/10 Problem?

- Monitor and manage ratio on a monthly basis
- Manage Non Title IV revenue including:
  - Student Cash….package students with required cash pays
  - Cash received from Non- Title IV eligible programs…creating short cash pay programs
  - Cash received from selling accounts receivable, if certain conditions are met
  - Cash received from state grant funds, career center funds, workforce reinvestment funds

Background on New Regs

• Public Hearings	June 2009
• Negotiated Rulemaking	Nov 2009 – Jan 2010
• NPRM 1	June 18, 2010
• NPRM 2	July 26, 2010
• Final Rules, NPRM 1	October 28, 2010
◦ Generally all rules are effective July 1, 2011.	
• Final Rules, NPRM 2	Early 2011 ?
• Additional guidance (DCL)	Early 2011 ?

14 Program Integrity Topics

- Gainful Employment in a Recognized Occupation
- Definition of a Credit Hour
- State Authorization
- Retaking Coursework
- Written Agreements between Institutions
- Incentive Compensation
- Ability to Benefit
- Misrepresentation
- Satisfactory Academic Progress
- High School Diploma
- Verification
- Return of Title IV funds for Programs with Modules
- Return of Title IV funds – Taking Attendance
- Timeliness of Disbursements

Incentive Compensation

- The safe harbors are removed from the regulations
- No incentive payment based in *any* part, directly or *indirectly*, upon success in securing enrollments or the award of financial aid to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of Title IV

Incentive Compensation

- 2 step decision analysis: a) have you awarded a sum of money and b) is it based in any part, directly or indirectly, on success securing enrollments or in making decisions regarding award of Title IV?

Incentive Compensation

- Incentive Payment means a sum of money or something of value paid for services rendered
  - multiple disbursements in a calendar year to a person engaged in student enrollment or admission activity or decisions regarding award of Title IV
  - does it include salary or fixed wage
- Securing Enrollment means activities engaged at any point in time through completion for the purpose of admission or matriculation of students or the award of financial aid

Incentive Compensation

- Promotions and demotions are permitted as long as they do not violate the prohibition
- Salary scales are permissible if they reflect differing levels of responsibility
- Merit adjustments not based on recruiting or awarding financial aid are permitted

Incentive Compensation

- Internet Recruiting/Third Party Recruiting permitted so long as payment to the third party is based on those who “click” and is not based in any part, directly or indirectly, on the number of individuals who enroll or are awarded financial aid
- This also applies to third parties, so long as compensation is not based in any part, directly or indirectly on success in securing enrollments or the awarding of financial aid

Incentive Compensation

- Institutions may make profit-sharing payments so long as they are not provided to a person who is engaged in student recruitment or admission activity or in making decisions on the awarding of title IV HEA funds

Misrepresentation

- A misleading statement is one that has the likelihood or tendency to deceive or confuse
  - Statements made in writing, visually, orally, or through other means
- Applies to statements regarding:
  - Nature of Educational Program
  - Nature of Financial Charges
  - Employability of Graduates
  - Relationship with DOE
- Made by representatives, agents, vendors, as well as marketing, advertising, recruiting, and admissions services
- Made to students, prospective students, accrediting agency, State agency, Secretary, or any member of the public

Misrepresentation

- Substantial misrepresentation – statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting or admissions services

Misrepresentation

- Institutions will be responsible for information in states in which the program is offered, not just where the institution is located
- Regulations are expanded to prohibit the withholding of information related to requirements that are generally needed to be employed in the fields for which training is provided

Misrepresentation

- Increase training and monitoring activities
- Consider all conversations subject to misrepresentation claims
- Use approved scripts
- Use only approved and current printed materials
- Stick to publicly-available information; don’t amplify

Misrepresentation

- PENALTIES
  - Revocation of Program Participation Agreement
  - Limitations on Participation in Title IV
  - Denial of Participation Applications
  - Proceedings seeking fine, limitation, suspension, or termination.

State Authorization

- An institution is considered legally authorized by a state if the state has a process to review and appropriately act on complaints concerning the institution, including enforcing applicable state laws, and the institution meets one of the following (not including governmental, Tribal and religious) sets of criteria:
- Established by name as an education institution -- through a charter, statute, constitutional provision, or other action issued by an appropriate state agency or state entity and authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate

State Authorization

- Complies with state approval/licensure. May be exempt based on the institution's accreditation by one or more accrediting agencies recognized by ED or based upon the institution being in operation for at least 20 years
- Established to conduct business in the state or to operate as a nonprofit charitable organization, but not by name as an educational institution, it may not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption
- Institutions must disclose contact information for filing complaints with its accreditor, state approval or licensing entity, and any other relevant state entity

New Program Approval

- Institutions must notify ED at least 90 days prior to offering the new program
  - Documentation on how the program is designed to meet those local market needs, or for online how it meets regional or national needs
  - Describe how the program was reviewed, approved, or developed with business advisory committees, public or private oversight or regulatory agencies, or business that would likely hire program graduates
  - Documentation that the program has been approved by accreditor or is otherwise included in the institution's accreditation by the accreditor
  - If the program is offered in conjunction with or in response to any governmental initiative, documentation about that
  - Any wage analysis performed, such as BLS wage data related to the new program

New Program Approval

ED will review documentation and decide if additional information is needed based on

- Institution's financial responsibility and administrative capability over existing programs
- Will the new program replace existing ones or supplement or expand current program offerings
- Is the new program inconsistent with the institution's historical offerings, growth and operation
- Sufficiency of the institution's process and determination to offer an additional program

New Program Approval

- If a new program is denied, ED will explain basis of denial
  - Institution will have opportunity to respond to those concerns and request reconsideration
  - May still offer the program as non-Title IV eligible
- Institutions bear the burden if it turns out a program is not approved

What is a New or Additional Program?

- 34 C.F.R. 600.10(c)(2) defines a new or additional program as:
  - A program with a Classification of Instructional Programs (CIP) code that is different from any other program offered by the institution
  - A program that has the same CIP code as another program offered by the institution but leads to a different degree or certificate (or)
  - A program the institution's accrediting agency determines to be a new or additional program

New Reporting and Disclosure Requirements

Institutions must provide clear and prominent notice delivered to students at appropriate times and in promotional materials prior to enrollment

- Prominently provide the information on the program's website homepage
- Provide a prominent and direct link to this page on any other webpage about a program
- Information must be in an open format that can be retrieved, downloaded, indexed and searched by common web search applications
- ED will be developing a disclosure form and will seek public input

New Reporting and Disclosure Requirements

Placement rates

- In Early 2011, ED will develop a method to calculate placement rates through the National Center for Education Statistics (NCES) to be reported through IPEDS
- Until then, institutions that calculate placement rates for one or more programs using accreditation or state standards must disclose that rate and identify the accreditor or state agency under whose requirements the rate was calculated
- If those rates are only calculated at the institutional level, the institution must use that methodology to calculate the program-specific placement rate

New Reporting and Disclosure Requirements

- On-time completion rate
  - Number of students who completed a program in normal
  - Time who completed in the most recent award year
  - -- X 100
  - Number of students who completed in most recent
  - award year

New Reporting and Disclosure Requirements

- Median loan debt
  - Institutions will report to ED debt for institutional financing plans and private educational loans
  - ED will combine these reported amounts and any FFEL and Direct Loan debt amounts in NSLDS for students who completed the program to determine the median loan debt
  - ED will provide institutions with disaggregated median loan debt amounts

Opportunity Ahead

Changing Regulatory Environment

- Understand regulations
- Continue the discussions
- Develop detailed action plans for implementation
- Determine Best Practices
- Develop a Code of Conduct

What is a Best Practice?

DEFINITION: A best practice is a technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success.

Have you established Best Practices?

- Satisfying the Regulations:
  - Develop a compliant admission compensation plan
  - Develop an appropriate process for review of materials to prevent any form of misrepresentation
  - Develop an appropriate process for reviewing state and accreditation guidelines to ensure compliance with licensing and new program development
  - Develop an appropriate process to ensure compliance with reporting and disclosure of outcomes
  - Develop an appropriate implementation plan for new satisfactory academic progress polices

What is a Code of Conduct?

DEFINITION: A code of professional conduct is a necessary component to any profession to maintain standards for the individuals within that profession to adhere. It brings about accountability, responsibility and trust to the individuals that the profession serves.

Code of Ethics & Conduct Shall Promote:

*[Insert school name] is committed to a quality business and reputation that values integrity, respect and truthfulness, and a strong commitment to the highest ethical standards.

*APSCU Code of Ethics and Conduct Template

- Promote compliance with the established Best Practices
- Reporting Actual or Suspected Violations of the Code
- Investigation of Alleged Violations of the Code
- Promote a zero tolerance for non-compliance
- Punitive actions for failure to uphold Code of Conduct

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Develop a Speak-Up Hotline

Purpose of the Anonymous Reporting Hotline

- Initially intended to provide a mechanism to allow employees to report financial irregularities or fraud
- Use has been broadened to include other unethical activities
- Aligns with School's expected business practices and integrity value

Employees are heard…

Partners

Good Communications within your organization…

- Academic Affairs
- Finance
- Human Resources
- Information Security
- Legal
- Marketing & Admissions
- Regulatory Affairs
- Student Financial Services

Focus on Ethical Standards and Code Of Conduct

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