



Regulatory and Legislative Update

ALYSSA DOBSON – CURRENT PASFAA PRESIDENT

DIRECTOR OF FINANCIAL AID AND SCHOLARSHIPS – SLIPPERY ROCK
UNIVERSITY OF PENNSYLVANIA

Regulatory Update = DISCLOSURE



I am not a representative of the United States Department of Education, I do not play one on TV, and I did not stay at a Holiday Inn last night.

However, I have always wanted to be something scary for Halloween..... 😊

Anyways, this can't serve as formal guidance, however I have served on several of negotiated rulemaking committees regarding the issues that we will discuss. And additionally, have had the opportunity to walk the halls of the Hill and communicate with our legislators and law makers directly.

We are in an era of change, even without an HEA authorization there is still SO MUCH we can talk about and so many things changing. Largely as an answer to the real, and sometimes perceived, issues facing our higher education community as a whole.

Another Note



Generally these two topics are offered separately. There is a compliance/regulatory and then separately a legislative update or briefing.

I, however, believe that they are inextricably linked

- Legislation drives our regulations
- A bill is the idea
- A bill becomes a law
- From the law we get regulations

If you want to change any of the regulations that we must all abide, you can be involved in negotiated rulemaking, partake in public comment, and most powerfully, advocate for the change you want to see.

This presentation is going to cover SO MANY topics! We will be touching on very high level concepts as well as some daily processes too, so hang in there. The presentation will be available for review later.

Gainful Employment



You are probably wondering why we are talking about this since it has been rescinded, right?....

Well there are still some really important things you need to understand

1. GE has been around for literally EVER. And the old “rules” are still in effect regardless of what your institution decided to do with early rescinding of the rule

- You must still have all GE programs approved and listed on your ECAR prior to awarding aid
- Let’s discuss the eligibility tree as I like to call it
 - Institution
 - Program
 - Student

Gainful Employment



So really, the only thing that goes away is reporting and disclosure

- If your school does nothing at all, this requirement is eliminated July 1, 2020
 - You still should have reported programmatic student level data by October 1st
- Your school must take definitive and documented action in order to early implement
 - Early implementation means:
 - No more reporting requirement
 - No more programmatic disclosures on your website or published materials
 - No more irritating trailer on your commercials “for information on program placement, outcomes, and the indebtedness of our student please visit blah blah.com”
 - Key parts for early implementation:
 - Cannot be a unilateral decision
 - Must be documented
 - I suggest meeting minutes followed up with presidential signature
 - I suggest keeping this with your PPA/ECAR since it is all related

Gainful Employment



Check your programs!

- They will no longer be eligible if the total hours/credits exceeds 150% of the required hours for a licensure or credential in your state
 - Example: cosmetology requires 1000 hours for certification in your state: your program CANNOT be longer than 1501 hours for completion
- This applies to existing programs as well as for new approvals
 - In effect July 1, 2020 so there is time to fix your programs and your ECAR

Borrower Defense



Oh boy - where to begin..... How about with history.

Many of us haven't even heard the term until recently. This is because it wasn't well defined in the regs and also because students didn't really use it much.

Technically it is "borrower defense against repayment"

If you have ever read an MPN, you have seen the following verbiage...

- In some cases, you may assert, under applicable law and regulations, a **defense against repayment** of your loan on the basis that the school did something wrong or failed to do something that it should have done. You can make such a **defense against repayment** only if the school's act or omission directly relates to your loan or to the educational services that the loan was intended to pay for. If you believe that you have a **defense against repayment** of your loan, contact your servicer.

Borrower Defense



So, BD is just the way in which a student could have their loans forgiven if they were misled intentionally by the school.

Students have had this option for many years, however it was rarely used prior to 2015

Some precipitous school closures coupled with blatant misrepresentation and fraud caused this issue to come to the forefront of ED's concern.

There weren't even good regulations written about how to process a BD claim

- Numerous questions arose and new regulations needed to be built
- ED called for the first neg reg session in 2015... and here we are now...

- **WITH THREE DIFFERENT RULES!**
 - We will talk about those in a minute, but first a little more history and rationale – it helps....

Borrower Defense



Until now the taxpayer was “on the hook” for any loans that were discharged because of a successful BD claim; or closed school discharge for that matter.

When more and more of these claims came to the forefront, ED wanted a way to ensure that the school who acted badly and not the taxpayer was responsible for paying these debts

It is difficult to collect money from a school that just precipitously closes

ED wanted a means by which to predict failing institutions. Then, a way to ensure enough funds to cover any liability from BD claims.

Let’s take a minute and discuss financial stability and fiscal security.....

- Financial scores
- 90/10 rule
- Public institution

3 Borrower Defense Periods



It really is this CRAZY

1. Loans first disbursed prior to July 1, 2017
 - Rely on the pre-2016 regulations (omission or act that would give rise to action under state law)
2. Loans first disbursed on or after July 1, 2017 but before July 1, 2020
 - Rely on the November 1, 2016 published rule
3. Loans first disbursed on or after July 1, 2020

The moral of the story is be glad you aren't a loan servicer 😊

But really this is important to us for a number of reasons and there are school consequences now that haven't been there before; along with monetary consequences

Borrower Defense



The second borrower defense period is pretty small, about three years. And until the new regs go into place we will STILL have to report all lawsuits within 10 days

- Recap: report all, yes ALL, lawsuits within ten days UNTIL July 1, 2020 and then we only have to report liabilities arising from a settlement, final judgment from a court, or final determination arising from an administrative action or proceeding initiated by a Federal or State entity.
 - Attorneys are good to have around some times....
- Use this email address to report them: FSAFRN@ed.gov
- You still think I am crazy don't you.....

Borrower Defense



Q3: Does the category of “Other Litigation” described in 34 C.F.R. § 668.171(c)(1)(ii) and referenced in 34 C.F.R. § 668.171(h)(1)(ii) include all lawsuits meeting the requirements regardless of their subject matter or amount? Is there any claim type or materiality limitation to the requirement?

A3: 34 C.F.R. § 668.171(c)(1)(ii) and the corresponding reporting requirement in 34 C.F.R. § 668.171(h)(1)(ii) do not limit the types of litigation that must be reported by the amount at issue or the type of claim that is brought. These requirements apply in every instance where an institution “is being sued in an action brought on or after July 1, 2017.” For example, lawsuits related to personal injury claims or fraud must be reported under 34 C.F.R. § 668.171(h)(1)(ii). The language of the regulation does not include any materiality threshold for litigation that must be reported under this requirement. Therefore, all litigation, regardless of the type of legal action or the size of the claim, must be reported.

Borrower Defense



I know it does sound unbelievable, this is the reason for the published Q&A from the department of education. It isn't really a Q&A as if you read the actual NPRM, it is rather straightforward.

Helpful links

Link to the Q&A:

<https://ifap.ed.gov/eannouncements/attachments/060319Comp2016BD2RypmtRegsQandAAttach.pdf>

Link to the “middle” BD regs: <https://ifap.ed.gov/fregisters/attachments/FR110116.pdf> But remember as of July 1, 2020 we follow these regulations from the final BD regs:

<https://ifap.ed.gov/fregisters/attachments/FR092319.pdf>

Borrower Defense



There are numerous other reportable items, but they are all rather rare, and we would only have to report them until July 1, 2020 anyways.

We will focus on the July 2020 reportable items:

- Liabilities as discussed previously
- Withdrawal of owner's equity (for-profit only) and only for those with a financial score of 1.5 or less
 - Several other reportable actions for for-profits only, and only those publicly traded
- Show cause from your accreditor
- Failing to meet 90/10

Most of the reportable items coincide with for-profit institutions

Borrower Defense



Historically, an institution is found to be financial responsible when:

- Have sufficient funds for timely returns of T4/HEA funds, i.e. no late returns
 - A caution for institutions who use “netting”... this is a focus of program reviews so be sure that you are drawing timely enough to net out any funds that are due back. I can speak to you one on one if you are concerned.
- Your composite score is 1.5 or higher
- You have administrative capability (I am paraphrasing here)
- You are backed by the full faith and credit of your state, i.e. part of the state system

However, now there will be additional benchmarks that will signify you ARE NOT financially responsible

- There are both mandatory and discretionary triggers that would elicit the need of a letter of credit (LOC) or it's equivalent

Borrower Defense



Mandatory Triggers

- Liabilities as discussed previously
- Withdrawal of equity for institutions already at 1.5 or below
- Several actions at or by the SEC (for profits only)
- Having two or more discretionary triggers WILL foster an LOC or equivalent
 - Essentially if you have more than one discretionary event or item, it is no longer at the Secretary's discretion
 - And unless one of the events has since been resolved

Borrower Defense



Discretionary Triggers

- Show cause from your accreditor
- Loss of licensure for a program(s) that require it
- Failing to meet 90/10
- Defaulting or otherwise violating a provision or requirement of a loan or other security with a creditor
- High annual drop out rates
 - This is calculated by the Secretary and has not yet been defined
- Two most recent CDRs are 30% or greater

Letters of Credits



A financial instrument

- Generally pretty expensive
- Basically a promise to some level of cash should it be needed
- The amount is determined by the secretary
- Currently used today, your institution might have one at ED already

Another means by which to ensure funds to protect against BD claims is acceptable

- It would be determined by a hearing official
- In accordance with other interactions between schools and ED
- The amount and nature will be determined by the usage of T4/HEA aid at the school
- Could take the form of a deferral of entitle aid
 - The school must still make disbursements to the students

Borrower Defense



The newest regulation, effective July 1, 2020 does allow for mandatory arbitration as well as class action waivers

- IF you have a plain language disclosure(s) regarding your agreements
- IF you disclose the use of said instruments on your website near the tuition, fees, and admission information
- IF you include this in your entrance counseling, meaning a notice to students regarding your use of these

The newest regulation also gets rid of the new concept from the 2016 rule of ‘repayment rates’

- I’ll spare you the details here as they won’t be a factor in the future

The newest regulation extends a closed school discharge window from 120 days to 180 days before the institution closed

- But! Ends automatic closed school discharge

Borrower Defense



A new way to calculate the composite score was necessary based on some FASB changes

Just make sure your bursar/accounting folks are aware of the change

Numerous grandfathering of different items that might have otherwise negatively impacted the calculation

I am sure NACUBO is on it!! Check out AR 18-05 at www.nacubo.org

More NPRMs...



Notice of Proposed Rulemaking = important things, especially without an HEA reauthorization. It is the vehicle that introduces new rules and regulations. There is always a public comment period and they are supposed to be issued after negotiated rulemaking.

NPRM on accreditation and innovation:

<https://www.federalregister.gov/documents/2019/06/12/2019-12371/student-assistance-general-provisions-the-secretarys-recognition-of-accrediting-agencies-the>

A ton of changes to accreditors, distance education, subscription learning... very important for your chief academic officers, attorneys, etc.

Accreditation and Innovation



Some key takeaways:

- Changes the minimum credit hour
 - Semester or Trimester hour will soon be 30 hours
 - Quarter hour will be 20
 - These are just minimums so our current credits as defined are okay
- Subscription based learning is codified in this NPRM
- Direct Assessment programs will require ED approval AND accreditation approval
 - A general heightened awareness and responsibility for accreditors in general and overall

Accreditation and Innovation



Changes to the order and programs for which returns are made

- Removed ACG and Smart and Perkins from verbiage
- Added Iraq and Afghanistan Service Grants
- Mostly just a technical correction here

Numerous new disclosures

- States that don't recognize your credential vs. states that do
- Institutions you WON'T accept credits from
- Criteria for accepting military service
- Teach out plans
- Several others...

Accreditation and Innovation



New R2T4/withdrawal implications for modular course delivery (and programs)

- Completing 50% or more of the number of days in the payment period = NO WITHDRAWAL
- Completing coursework equal to the institutional definition of part time = NO WITHDRAWAL
- Interesting for our summer terms (standard term schools)
- I would anticipate some guidance forthcoming from FSA soon... again with July 1, 2020

Looking Forward



We can expect a few more NPRMs in the future

- At least one regarding some beneficial changes to the TEACH grant
 - Easier to maintain grant status
 - Prevent unnecessary conversion to loans
 - Provide an appeal process
- Must still address religious school participation and distance education as well
 - May combine them... maybe not... we shall see
- Don't forget that after they are issued, you can make public comment to hopefully influence the final published rules!!

Verification



The groups are not changing... but the IRS did...

- We will still have groups V1, V4, and V5 (no body knows why they skipped 2 and 3 😊)
- The items that we need to verify for those groups will not be changing and haven't changed in a few years
- However, the IRS made drastic changes to the 1040 form that will mean changes to the way in which we gather information.
 - In addition to needing the signed 1040, we will now also need schedules 1, 2, and 3 if filed
 - This will be problematic as we know some folks don't know what a 1040 is; let alone the schedules.
 - Confirmation that tax transcript is not required, we can still use the signed 1040 but..... Maybe easier with transcript or DRT (preferred!)
- Leniency with verification of nonfiling: Individuals are required to obtain verification of nonfiling (VNF) from the IRS or other tax authorities. Individuals who are unable to obtain verification of nonfiling from the IRS or other relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution **may accept a signed statement** certifying that the individual attempted to obtain the verification of nonfiling from the IRS or other relevant tax authority and was unable to obtain the required documentation.

Verification



FAFSA Information

Adjusted Gross Income

U.S. Income Tax Paid

Untaxed Portions of Individual Retirement Account (IRA) Distributions and Pensions

IRA Deductions and Payments

Tax Exempt Interest Income

Education Credits

Acceptable Documentation

2018 IRS Form 1040 Line 7

2018 IRS Form 1040 Line 13 minus Line 46 of Schedule 2 (Form 1040)

2018 IRS Form 1040 Lines 4a minus 4b. Note: Exclude rollovers.

2018 IRS Schedule 1 (Form 1040) Line 28 plus Line 32

2018 IRS Form 1040 Line 2a

2018 IRS Schedule 3 (Form 1040) Line 50

EA 3-5-19



Determining the prorated amount of charges associated with a payment period

- Super important for institutions or programs that have a required kit or that supply books
- This means a set of supplies/books that is required for every student and IS provided by your institution
- If the intent is for use over several or maybe all payment periods, careful proration is required
 - Must distinguish between returnable vs. non returnable
 - Must also distinguish between institutional cost vs. billable cost
- Very specific; if this pertains to you, I encourage your review of EA 3-5-19
- Inclusive access institutions take note!

Auto Zero and Simplified Needs



2020-21 Simplified needs income benchmark is >\$50,000

2020-21 Auto zero income benchmark \$26,000

Instead of asking about 1040A/EZ, the FAFSA will now ask if you have filed a schedule 1

- The schedule 1 was the closest resemblance that ED could find
- It is problematic
 - Every resident of Alaska files the schedule 1
 - Unemployment goes on schedule 1
 - Educator expenses
 - Capitol gains
 - Student loan interest deductions
 - Others....
 - SO THE STUDENTS WILL BE ASKED IF THEY ONLY FILED A SCHEDULE 1 TO REPORT THESE!!! UGH, THE COMPLEXITY!

Auto Zero and Simplified Needs



One final note about Auto Zero: An independent student WILL NOT QUALIFY for this type of EFC if their only other household member is a spouse, i.e. they aren't supporting a child.

Fun fact: The same family, with working income and doesn't qualify for auto zero, files a FAFSA as a NY resident and then as a PA resident....

- The NY resident will have a lower EFC
- There are allowances for state taxes!
- We all 'need analysis'
 - See what I did there.....

Food For Thought



The FAFSA asset protection allowance or APA has steadily decreased.

With simplification and formula re-writes so widely talked about, maybe this should be included

For 65 year old parents (it is currently scaled by age) in 2009-10 \$84,000 was protected before being applied in any ratio against the EFC. Today only \$9,400 is protected. This is a troubling trend that makes saving for education a detriment to the aid that can be attained.

Another example: 48 year old parents have gone from \$52,400 in 2009-10 down to only \$6,000 currently.

This is an 88% reduction in protected assets. Now it isn't a dollar for dollar impact on the EFC but when college savings impact your aid dollars at all it just seems counterintuitive to encouraging savings.

Legislative Front

Special Announcement: There will never be an HEA authorization



That was sarcasm ----- maybe-----

Higher Education Act of 1965

- Signed into law by Lyndon B. Johnson
- Financial assistance is covered in Title IV of HEA
- Last reauthorized in **2008**
- Should have been reauthorized in 2013
- **6 YEARS OVERDUE! And 10 years since a new HEA**

Legislative Front



On HEA, we keep hearing that there will be movement, but we still only have

- Prosper (House repubs)
- Aim Higher (House dems)
- Our friend Lamar has introduced a scaled back version of HEA “Student Aid Improvement Act”
 - FAFSA simplification, about 17-30 questions
 - Easier to qualify for maximum Pell
 - Short-term Pell
 - Simplify (his words NOT mine) aid letters
 - Increases max Pell
 - Introduces “student aid index” instead of EFC

We will review only some of the current legislation that is out there. None of it has much of a hope for passage, but it is all important as it indicates the different ideas and overall climate that is going to shape whatever iteration of HEA we end up with.

Legislative Front



Classroom to Careers Act of 2019

- Allow students to work full time with FWS
- Must comply with the workforce innovation and opportunity act
 - Align with skills needed in state or regional industries
 - Prepare the student to be successful in secondary or postsecondary education options
 - Include counseling to support the student's career or educational goals
 - Include, if appropriate, education offered concurrently and in the same context as the workforce training
 - Help the student advance within a specific occupational area

Student Loan Deferment Act

- Increases the six-month grace period to one full year

Student Loan Debt Relief Act of 2019

- Provide \$50,000 in loan forgiveness with household incomes of \$100,000 or less
- Remove the taxable nature of loan forgiveness
- Include private loans in the forgiveness as well

Legislative Front



Understanding the True Cost of College Act

- Mandate standardized award notices
- Including strict format and rules

Empowering Students Through Enhanced Financial Counseling Act

- Create an annual counseling requirement rather than one time
- Include Pell counseling

College Equity Act

- New grant to address inequities
 - Institutions conduct inequity audits
- Accreditation mandate to assess institutional inequities

Student and Taxpayer Protection Act

- Reinstate the GE regulations that were recently pulled back

Legislative Front



FAFSA Fairness Act

- Students who can't supply parental information would have an easier path to independent status
- Screening question would make them provisional DO
- Institutions still determine and document the DO status

American Dream and Promise Act

- Allow “Dreamers” to be eligible for T4

PSLF Technical Corrections Act

- People in the wrong payment plan can qualify

For-Profit Fraud Act

- Restores the 85/15 ratio

Legislative Front



Affordable Loans for Any Student Act

- Eliminate origination fees and capitalization
- Create only 2 repayment plans
- Add simplification to all processes

REAL Act and Pell Flexibility Act

- Allow incarcerated student to be eligible
- Allow Pell for short-term, skill based, programs

Stop Student Debt Relief Scams

- End the misuse of borrower information

Protect Student Borrowers Act and Skin in the Game Act (I did not make up that name)

- Institutional risk sharing
- Require payments from institutions based on their CDR
- Between 5% and 20% of the total amount of dollars in default

Legislative Front

Perkins Re-Born.... Zombie Perkins.... Perkins 2.0.... RE-Perk.....



That's right, I said Perkins

Bi-Partisan effort to bring it back

- Working largely with COHEAO
- Update the formula to gradually adjust for the unfair base guaranty
- Maintains all of the beneficial qualities of the campus based funds
- Schools would have to match any new Federal portion

- When introduced, it will be called the Perkins Access, Retention, and Completion (ARC) Act

Questions??



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)