

# Session #25

## General Provisions and Non- Loan Program Issues - Institutional

**Carney McCullough**  
**U.S. Department of Education**



START HERE  
GO FURTHER  
FEDERAL STUDENT AID®

# Negotiated Rulemaking

- Hearings in Denver, Little Rock, and Philadelphia—June 2009
- Federal Register Notice—September 2009
- Two teams—Program Integrity and Foreign Schools

# Program Integrity

- 14 issues
- Three meetings—November and December 2009 and January 2010
- Consensus not reached

# Program Integrity

- Notice of Proposed Rulemaking—  
June 18, 2010
- Comment period ended—August 2, 2010
- Nearly 1,200 comments received
- Final regulations—October 29, 2010
- Effective date—July 1, 2011

# Today's Agenda

- State Authorization (§§600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9, and 668.43(b))
- Credit Hour (§§600.2, 602.24, 603.24, and 668.8)
- Gainful Employment (§§600.2, 600.4, 600.5, 600.6, 668.6, and 668.8)
- Misrepresentation (Subpart F of Part 668)
- Written Arrangements (§§668.5 and 668.43)

# Today's Agenda (cont'd)

- Incentive Compensation (§668.14(b))
- Disbursement (§§668.164(i), 685.102(b), 685.301(e), 686.2(b), and 686.37(b))
- Return of Title IV Funds (§§668.22(a), 668.22(b), 668.22(f), and 668.22(l))



# State Authorization

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



# State Authorization

Why revise state authorization provisions?

- To strengthen State role in approving and monitoring institutions
- To clarify what is required for an institution to be considered legally authorized by a State for purposes of Federal programs





# State Authorization (cont'd)

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.

# State Authorization (cont'd)

Clarify requirements based on whether the institution is—

- Established by name as an educational institution
- Authorized to conduct business
- Authorized to operate as a nonprofit charitable organization

Federal, tribal, and religious institutions are exempt from these requirements

# State Authorization (cont'd)

If established as an educational institution by a State—

- Must comply with any applicable State approval or licensure requirements
- State may exempt the institution from State approval or licensure requirements based on—
  - The institution's accreditation or
  - The institution being in operation for at least 20 years



# State Authorization (cont'd)

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
- May not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption

# State Authorization (cont'd)

- State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals
- For a tribal college, provides that the tribal government has a process to review and appropriately act on complaints



# State Authorization (cont'd)

- Defines religious institution as an institution that is owned, controlled, operated, and maintained by a religious organization and awards only religious degrees or certificates
- Exempts religious institutions that are exempt from State authorization under State law or under a State's constitution



# State Authorization (cont'd)

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, it must meet State requirements to be legally offering postsecondary distance or correspondence education in the State. It must be able to document the State's approval, upon request.

# State Authorization (cont'd)

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



# State Authorization (cont'd)

- 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



# Credit Hour

Why develop a credit hour definition?

- No current definition for programs funded under the HEA
- To establish consistent measure of eligibility for Federal funding

# Credit Hour (cont'd)

- Establishes definition solely for Federal program purposes
- 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



# Credit Hour (cont'd)

- Reflects intended learning outcomes & evidence of student achievement that approximates not less than—
  - One hour classroom/two hours out of class student work, or
  - Equivalent work for other academic activities as established by the institution



# Credit Hour (cont'd)

- Create procedures that accrediting agencies must use to determine if an institution's assignment of a credit hour is acceptable

# Credit Hour (cont'd)

- Modifies provisions on when an institution must use clock or credit hours and standards for credit-to-clock-hour conversions

# Credit Hour (cont'd)

- Undergraduate nondegree credit hour programs must use clock-to-credit hour conversion unless each course in the program is fully acceptable to a degree program at the institution
- Institution must be able to demonstrate that students enroll in and graduate from that degree program





# Credit Hour (cont'd)

New conversion ratios—

- One semester or trimester credit hour is equal to at least 37.5 clock hours
- One quarter credit hour is equal to at least 25 clock hours



# Credit Hour (cont'd)

Exception for institutions that demonstrate that the credit hours meet new definition and there are no deficiencies identified by accreditor or State for assigning credits; however, must meet these minimums—

- One semester or trimester credit hour is equal to 30 clock hours
- One quarter credit hour is equal to 20 clock hours



# Credit Hour (cont'd)

For students enrolled in programs subject to the conversion as of July 1, 2011, the institution may—

- Use current regulations until the students complete the program; OR
- Apply new regulations for all students enrolled in payment periods assigned to the 2011-12 award year



# Credit Hour (cont'd)

For students who enroll or reenroll on or after July 1, 2011, the institution must use the new regulations

# Gainful Employment

§§600.2, 600.4, 600.5,  
600.6, 668.6, and 668.8



# Gainful Employment

Why make these gainful employment changes?

- To provide students and families with better information about programs that lead to gainful employment



# Gainful Employment (cont'd)

Applies to certain programs that are Title IV eligible because they lead to “gainful employment in a recognized occupation”

# Gainful Employment (cont'd)

- All programs at for-profit schools except for—
  - Program leading to baccalaureate degree in liberal arts (proprietary institution)
- Any program at a public or not-for-profit school that is not—
  - A program leading to degree
  - A transfer program of at least two years





# Gainful Employment (cont'd)

Recognized occupation is redefined as—

- One identified by a Standard Occupational Classification (SOC) code established by OMB, or
- One identified by an Occupational Network O\*NET-SOC code established by DOL



# Gainful Employment (cont'd)

- Outdated reference to the Dictionary of Occupational Titles is replaced with current references to SOC codes established by OMB and DOL



# Gainful Employment (cont'd)

Institution must annually submit information on *students who complete a program* leading to gainful employment in a recognized occupation including—

- Student and program information
- Amount from private loans or finance plans
- Matriculation information
- End of year enrollment information

# Gainful Employment (cont'd)

- Reporting by October 1, 2011
  - 2006-2007 award year information (if available)
  - 2007-2008, 2008-2009, 2009-2010 award year information
- Reporting for 2010-2011 and beyond
  - No earlier than September 30 but no later than the date established by the Secretary in a Federal Register



# Gainful Employment (cont'd)

Required disclosures in promotional material for prospective students and on Web site to include—

- Programs' occupations
- Cost
- Completion rate
- Placement rate
- Median loan debt



# Gainful Employment (cont'd)

## "New Programs" Notification—

- An institution must notify ED *at least 90 days before the first day of class* when it intends to offer a new educational program that leads to gainful employment in a recognized occupation
- Effective July 1, 2011

# Gainful Employment (cont'd)

“New Program” Notification includes—

- Demand for program, including needs of various markets
- Wage analysis information
- Program review/approval process
- Demonstrate approval through school accreditation
- First day of class



# Gainful Employment (cont'd)

## "New Program" Approval Process—

- Unless ED requires approval for new programs, school is not required to get ED approval after notification is submitted
- If notification is not timely, school must obtain ED approval
- If ED needs to approve the program, an alert notice will be sent to the school at least 30 days before first day of class





# Gainful Employment (cont'd)

## Department's "New Program" Review

- Evaluates financial and administrative capability
- Determines whether program replaces or expands existing programs
- Looks at how program fits with historic offerings, growth, and operations
- Determines whether process and determination to offer program is sufficient

# Gainful Employment (cont'd)

- For “New Program” denials, ED will—
  - Explain how program failed
  - Provide opportunity for school response
- School may request reconsideration

# Misrepresentation

## Subpart F of Part 668



# Misrepresentation

Why revise the provisions on misrepresentation?

- Regulations last revised over 20 years ago
- Complaints from students who allege they were victims of false promises
- GAO undercover audit
- Strengthen ED's regulatory enforcement authority

# Misrepresentation (cont'd)

In general, the misrepresentation regulations describe—

- The actions ED may take if it determines that an institution has engaged in substantial misrepresentation
- The types of activities that constitute substantial misrepresentation



# Misrepresentation (cont'd)

In addition, the regulations—

- Provide that an eligible institution is deemed to engage in substantial misrepresentation if the institution, one of its representatives, or an entity under contract to the institution for providing educational programs or marketing, advertising, recruiting, or admissions activities makes a substantial misrepresentation regarding the eligible institution



# Misrepresentation (cont'd)

Finally, the regulations—

- Clarify that substantial misrepresentation is prohibited in all forms

# Misrepresentation (cont'd)

## 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 ED





# Misrepresentation (cont'd)

## 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. Includes student testimonials given under duress or because such testimonial was required to participate in a program



# Misrepresentation (cont'd)

## Substantial misrepresentation

- Any misrepresentation on which the person to whom it was made could reasonable be expected to rely, or has reasonably relied, to that person's detriment

# Misrepresentation (cont'd)

Describes misrepresentation with respect to—

- Nature of the educational program (668.72)
- Nature of financial charges (668.73)
- Employability of graduates (668.74)
- Relationship with the Department of Education (668.75)

# Misrepresentation (cont'd)

**Not** covered under the misrepresentation regulations—

- Does **not** provide an additional avenue for litigation for students, employees, and other members of the public
- Does **not** create a new Federal private right of action

# Written Arrangements

§§668.5 and 668.43



START HERE  
GO FURTHER  
FEDERAL STUDENT AID®

# Written Arrangements

Why revise these provisions?

- Address arrangements between institutions under common ownership
- Restrict arrangements with ineligible institutions
- Align with definition of an educational program
- Expand student notification requirements related to written arrangements

# Written Arrangements (cont'd)

- Clarify that another institution may provide part—not all—of an educational program under a written arrangement
- Clarify that degree-granting institution has all necessary approvals to offer the educational program in the format in which it is being provided (i.e., distance education)

# Written Arrangements (cont'd)

- Under written arrangements between two eligible for-profit institutions under common ownership, requires that the degree-granting institution provide more than 50% of the educational program





# Written Arrangements (cont'd)

- Added to the list of conditions under which a written arrangement between an eligible institution and an ineligible institution or entity is not permissible if the ineligible institution or entity—
  - Had its certification to participate revoked
  - Had its application for recertification denied
  - Had its application for certification denied



# Written Arrangements (cont'd)

- Requires institutions to make information available to students about—
  - Portion of the educational program provided by the nondegree-granting institution
  - Name and location of the nondegree-granting institution/organization
  - Estimated additional costs to students
  - Method of delivery



# Written Arrangements (cont'd)

- Applies to blanket, programmatic arrangements but not to individual, student-initiated arrangements

# Incentive Compensation

§668.14(b)



START HERE  
GO FURTHER  
FEDERAL STUDENT AID®

# Incentive Compensation

Why revise the incentive compensation provisions?

- Complaints from consumers about aggressive sales techniques
- Improve compliance

# Incentive Compensation (cont'd)

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

# Incentive Compensation (cont'd)

- Does not apply to recruitment of foreign students who reside in foreign countries and who are not eligible for Title IV aid

# Incentive Compensation (cont'd)

- Removed safe harbors
- Added definitions to clarify who, how, and what is affected
- Use questions to evaluate employee bonus or incentive payments



# Incentive Compensation (cont'd)

*Two-part test* 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



# Incentive Compensation (cont'd)

- (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

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

# Disbursement

§§668.164(i), 685.102(b),  
685.301(e), 686.2(b), and  
686.37(b)



# Disbursement

Why revise these disbursement provisions?

- To prevent student withdrawals due to lack of funds
- To reduce disbursement delays and promote timely disbursements
- To ensure that students have timely access to books and supplies

# Disbursement (cont'd)

- For Pell Grant eligible students
- Offers a way to purchase required books and supplies—
  - If institution could disburse 10 days before payment period and credit balance would result
  - Must provide by 7<sup>th</sup> day of payment period



# Disbursement (cont'd)

- Institution provides lesser of—
  - Presumed credit balance OR
  - Amount needed by student, as determined by the institution
- Institution uses
  - Actual costs or
  - Allowance in COA



# Disbursement (cont'd)

- Student must be able to buy books and supplies by 7<sup>th</sup> day of payment period unless the institution knows the student isn't attending
- May use stored value card, prepaid debit card, or book store voucher

# Disbursement (cont'd)

- No change in R2T4 treatment
- If funds have been credited and student doesn't begin attendance, institution must return funds according to §668.21
- If funds have been credited and student withdraws, institution must return funds according to R2T4
- Counseling required under §668.16(h)
- Disclosures required under §§668.42 and 668.165(a)(1)





# Disbursement (cont'd)

- Policy required under §668.164(i) must specify—
  - How a Pell-eligible student can opt out
  - That no written authorization required if a student purchases books using the institution's system



# Return of Title IV Funds

§§668.22(a), 668.22(b),  
668.22(f), and 668.22(l)



# Return of Title IV Funds

Why revise the R2T4 approach to modules?

- To ensure equitable treatment for students who withdraw from credit hour programs, regardless of whether the programs—
  - Span the length of the term, or
  - Include compressed courses and those offered in modules



# R2T4 - Modules

- “Offered in modules” defined as—
  - Course or courses in a program that do not span the entire length of payment/enrollment period



# R2T4 – Modules (cont'd)

- For credit hour or clock hour programs—
  - Withdrawn if doesn't complete all days in payment/enrollment period scheduled to complete prior to withdrawing



# R2T4 – Modules (cont'd)

- To calculate percentage of payment period/enrollment period completed for credit hour programs:
  - Include calendar days scheduled to be completed regardless of whether any course was completed that is less than the length of the term
    - Excludes scheduled breaks of at least 5 consecutive days



# R2T4 – Modules (cont'd)

- Student who ceases attending a module but who confirms that he/she will attend a module beginning later in the same payment/enrollment period is not considered a withdrawal



# R2T4 – Modules (cont'd)

- Must get confirmation when ceases attendance
- For nonterm and nonstandard-term programs, must attend module no later than 45 days after ceasing attendance





## R2T4 – Modules (cont'd)

To determine if a student in a program with modules has withdrawn, ask 3 questions:

- (1) Did the student cease to attend or fail to begin attendance in a course scheduled to attend? (If yes, go to question 2.)

# R2T4 – Modules (cont'd)

- (2) When ceased to attend or failed to begin attendance in a scheduled course, was the student attending other courses? (If no, go to question 3.)



# R2T4 – Modules (cont'd)

- (3) Did the student confirm attendance in a later module in the payment/enrollment period (45 day rule, if applicable)?
  - If no, student is a withdrawal

If not a withdrawal, Pell recalculations may apply.



# Return of Title IV Funds

Why revise the R2T4 position on taking attendance?

- Ensure that best information is used
- More accurate determination of how much Title IV aid is earned by a student who withdraws

# R2T4 – Attendance

An institution is required to take attendance if an outside entity or the institution itself—

- Requires instructors to take attendance, or
- Has a requirement that can only be met by taking attendance or a comparable process



# R2T4 – Attendance (cont'd)

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
- On a specific date—NOT considered to be required to take attendance



# R2T4 – Attendance (cont'd)

Attendance must be “academic attendance” or “attendance at an academically-related activity” including—

- Physically attending class
- Submitting academic assignment
- Taking exam, interactive tutorial or computer-based instruction
- Attending school assigned study group, or



# R2T4 – Attendance (cont'd)

- Participating in online discussions about academic matters and/or initiating contact with faculty to ask questions about subject matter



# R2T4 – Attendance (cont'd)

Attendance does NOT include—

- Living in institutional housing
- Using meal plan
- Logging into an online course without active participation
- Academic counseling

Student's certification of attendance without school documentation is not acceptable.

# Questions??



START HERE  
GO FURTHER  
FEDERAL STUDENT AID®

# Contact Information

I appreciate your feedback and comments. I can be reached at:

- Phone: 202/502-7639
- Email: [Carney.McCullough@ed.gov](mailto:Carney.McCullough@ed.gov)
- Fax: 202/502-7874