

**SURVIVING THE STORM AND
EMERGING STRONGER:
PREPARING FOR ED'S PROGRAM INTEGRITY
REGULATIONS**

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Current Political Climate for For-Profit Institutions



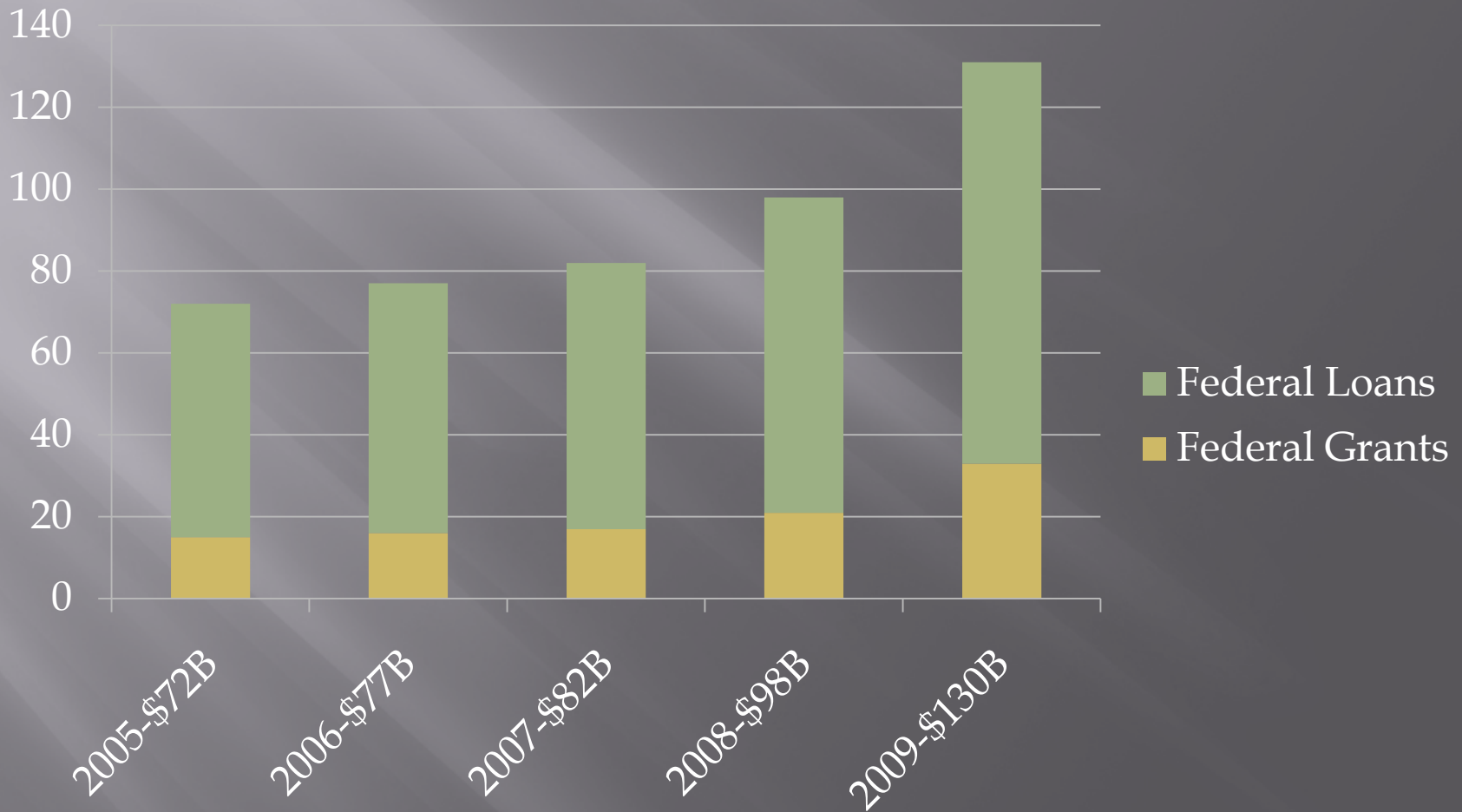
HEOA of 2008 Loosens 90-10 Restrictions

- Institutional Loans Accounted for Based on NPV Instead of Cash Basis (7/1/08-7/1/12).
- Unsub Loan Revenue in Excess of Pre-ECASLA Limits as Non-Title IV Revenue (7/1/08-7/1/11)
- Revenue from Non-Title IV for Programs Leading to Licensure and Certification Counted as Denominator Revenue
- Funds from Revenue-Generating Activities Necessary for Training for NON-Title IV Programs to be Counted as Denominator Revenue
- Institutional Scholarships Rebut Presumption (Reduce Nominator)
- 90-10 provision moved from definition of “proprietary institution of higher education” to PPA section of HEA.

HEOA of 2008 Expands Pell by Permitting Two Pell Awards in One Award Year

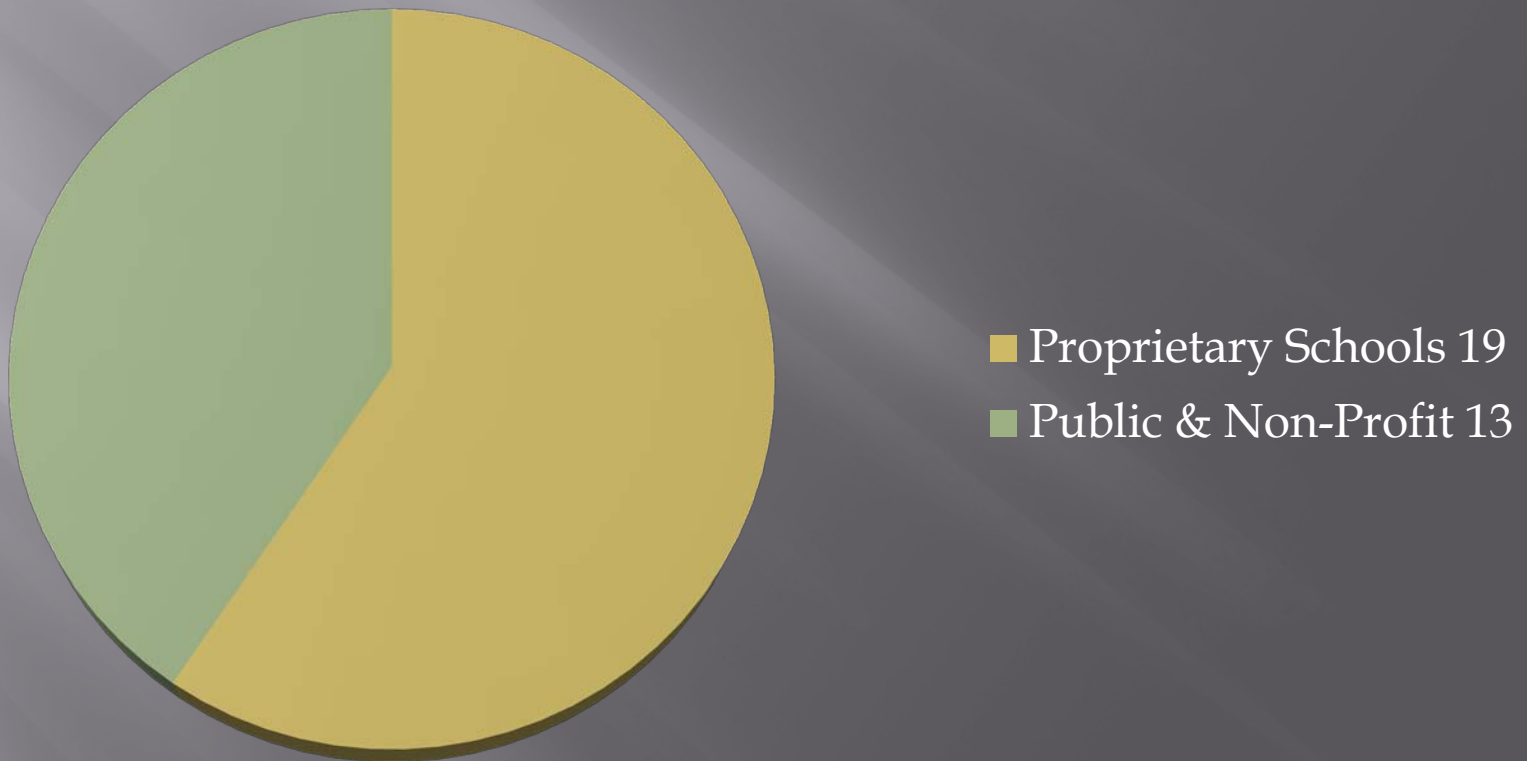


Federal Student Aid Disbursed to Students: FY 2005-09



March 2010: GAO Releases Report on Incentive Compensation

1998-2009 Number of Incentive Compensation Violations



May 4, 2010: PBS Airs Frontline's "College, Inc."



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COLLEGE INC.

Investigating how Wall Street and a new breed of for-profit universities are transforming the way we think about college in America...



Introduction >>

Watch the Full Program Online



Join the Discussion

Your thoughts on this new kind of American education?

Interviews

Michael Clifford, Mark DeFusco, Barmak Nassirian, Jeff Silber, Gail Mellow, Daniel Golden, Brian Mueller

Responses from the Colleges

...and other interesting readings and links

May 26, 2010: Short Seller, Michael Eisman, Delivers “Subprime Goes to College” Speech

“Until recently, I thought that there would never again be an opportunity to be involved with an industry as socially destructive and morally bankrupt as the subprime mortgage industry. I was wrong. The For-Profit Education Industry has proven equal to the task.”



June 17, 2010: House Education & Labor
Committee Holds Hearing Examining
Accrediting Agencies' Review of Credit
Hours & Program Length

“[I]nstitutions now have requirements to shareholders, to profit margins, to the stock market and to others.” “This is a matter of serious concern.”

Rep. George Miller (D-Calif), chair of the House Committee on Education and Labor.

June 18, 2010: ED Issues Program Integrity NPRM Disproportionately Impacting For-Profits

•Changes Proposed:

- Schools Considered “Required to Take Attendance” (No Use of Midpoint for Unofficial Withdrawals) if Institution Has Policy that Requires Attendance to be Taken
- Define and Assesses Whether Proprietary Programs Lead to “Gainful Employment”
- Eliminate Safe Harbors of Incentive Compensation Regulations
- Expand Activities that Would be Considered Misrepresentation and Expand Scope of its Applicability
- Student Who Withdraws from Module (Session) Considered Withdrawn Even if She Completes Second Module.
- Eliminate 30% Verification Cap
- Etc.

June 21, 2010: Senate & House Members Request GAO to Assess Quality of For-Profits and How Much of Their Revenue Comes from Federal Funds

“Currently, for-profit colleges account for less than ten percent of total higher education enrollment but account for approximately 25 percent of all Federal student aid disbursements.”

Press Release of Senators Tom Harkin and Richard Durbin and Congressmen George Miller, Timothy Bishop, Ruben Hinojosa.

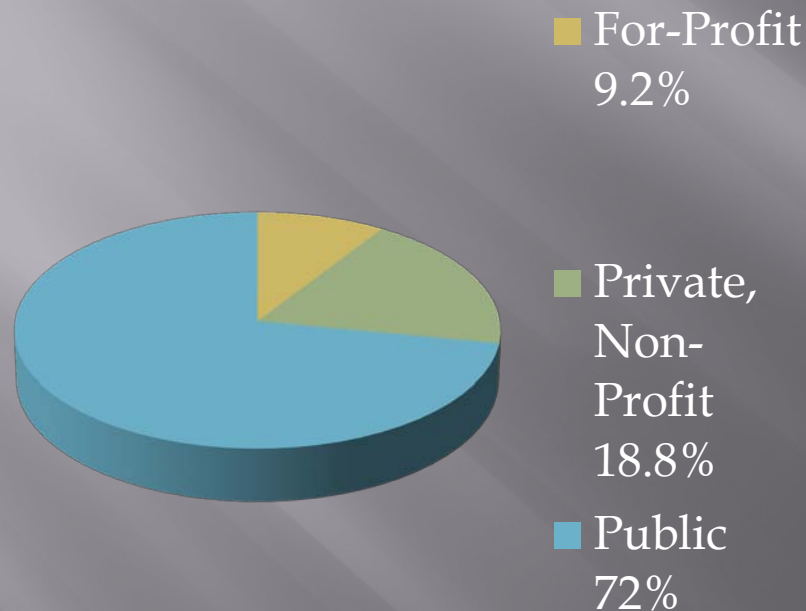
June 24, 2010: Senator Harkin Holds First Hearing on For-Profits

- ▣ Witnesses Stacked Against Proprietary Sector:
 - Eisman Redelivers “Subprime Goes to College Speech.”
 - Yasmine Issa, former student of proprietary school with substantial debt and unemployed
 - Margaret Reiter, plaintiffs’ attorney who sues for-profits
 - Kathleen Tighe, ED Inspector General
 - Sharon Thomas Parrot, Senior VP for DeVry, Inc.
- ▣ Senator Al Franken: *“Well, we have a job here, and part of it is to look out for Ms. Issa, look out for the taxpayer, and I’ll be damned if I’m going to be a Senator and not do that job.”*

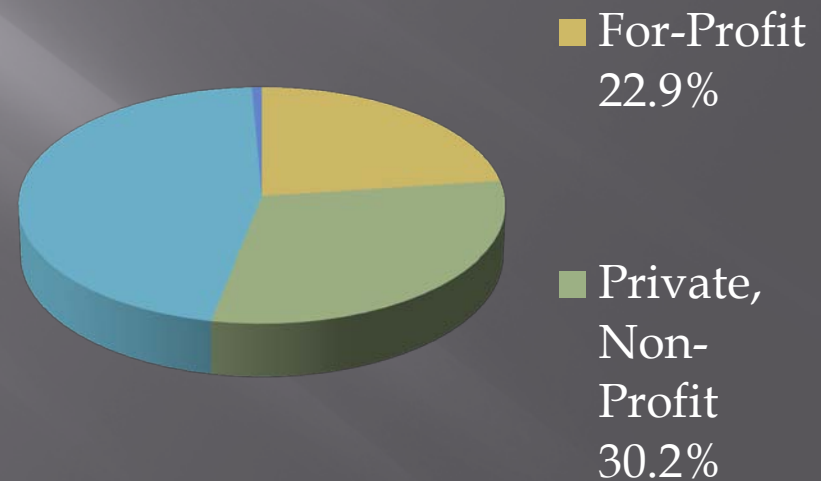


Tom Harkin: For-Profits Receive Disproportionate Amount of Title IV

HIGHER ED
ENROLLMENT (2008)




FEDERAL STUDENT AID
(2008-09)



June 30, 2010: Senator Durbin Delivers Speech at National Press Club

- ▣ Durbin Proposes:
 - “Tightening” 90-10
 - Consider “appropriate[ness]” of using federal funds for “slick” marketing campaigns
 - ✓ Create Bureau of Consumer Financial Protection to oversee private student loans at for-profits
 - Consider “appropriate[ness]” of practice of buying accreditation from non-profit schools



August 4, 2010: Second Harkin Hearing: GAO Report

- ▣ GAO Releases Report and Testifies about Undercover Testing of 15 For-Profit Colleges
- ▣ GAO Concludes:
 - 4 colleges encouraged to falsify FAFSA
 - For example, one admissions representative told an applicant to fraudulently remove \$250,000 in savings.
- ▣ All 15 made deceptive or otherwise questionable statements to GAO's undercover applicants. For example:
 - Exaggerated undercover applicants' potential salary after graduation;
 - Failed to provide clear information about the college's program duration, costs, or graduation rate despite federal regulations requiring them to do so;
 - Pressuring applicants to sign a contract for enrollment before allowing them to speak to a financial advisor about program cost and financing options

August 4, 2010 Harkin Hearing: Immediate Impact

- ▣ Within hours of hearing, Credit Suisse analysts negatively commented on the for-profit sector
- ▣ Within 2 days, for-profit sector's stock downgraded by BMO Capital Markets
- ▣ For-profit's publicly traded companies down more than 10% by the end of the week

August 13, 2010:

ED Promises Senators Harkin and Enzi Increased Enforcement Against For-Profits

- ED is seeking increased budget for FSA oversight.
- ED is in the process of hiring more than 60 additional staff :
 - To strengthen oversight of schools and
 - Conduct 50% more program reviews of postsecondary schools each year.
- FSA will also hire a new Chief Customer Experience Officer to manage consumer protection activities.
- FSA is improving data analysis efforts to provide early indicators of fraud or other risks of impropriety.
 - New Integrated Partner Management System that will capture information from audits, financial statements, accrediting agencies, and recertification reviews, which will be used to target enforcement efforts.
- FSA consider using undercover agents to monitor institutions' legal compliance and accuracy of information provided by institutions to prospective students through recruiters and financial aid advisors.
- FSA will use a recovery audit contractor program established by the Improper Payments Elimination and Recovery Act whereby auditors are contracted to audit federal fund recipients. Auditors are paid based on the number of abuses or errors the find.

September 2010: ED Releases 5-Year Plan

- ▣ Provide superior service and information to students and borrowers
- ▣ Better serve the interests of students, from policy to delivery
- ▣ Develop efficient processes and effective capabilities
- ▣ Develop FSA's performance culture and become one of the best place to work in the federal government.
- ▣ **Ensure program integrity and safeguard taxpayers' interests (Increased enforcement efforts)**

Pressures on ED's FSA

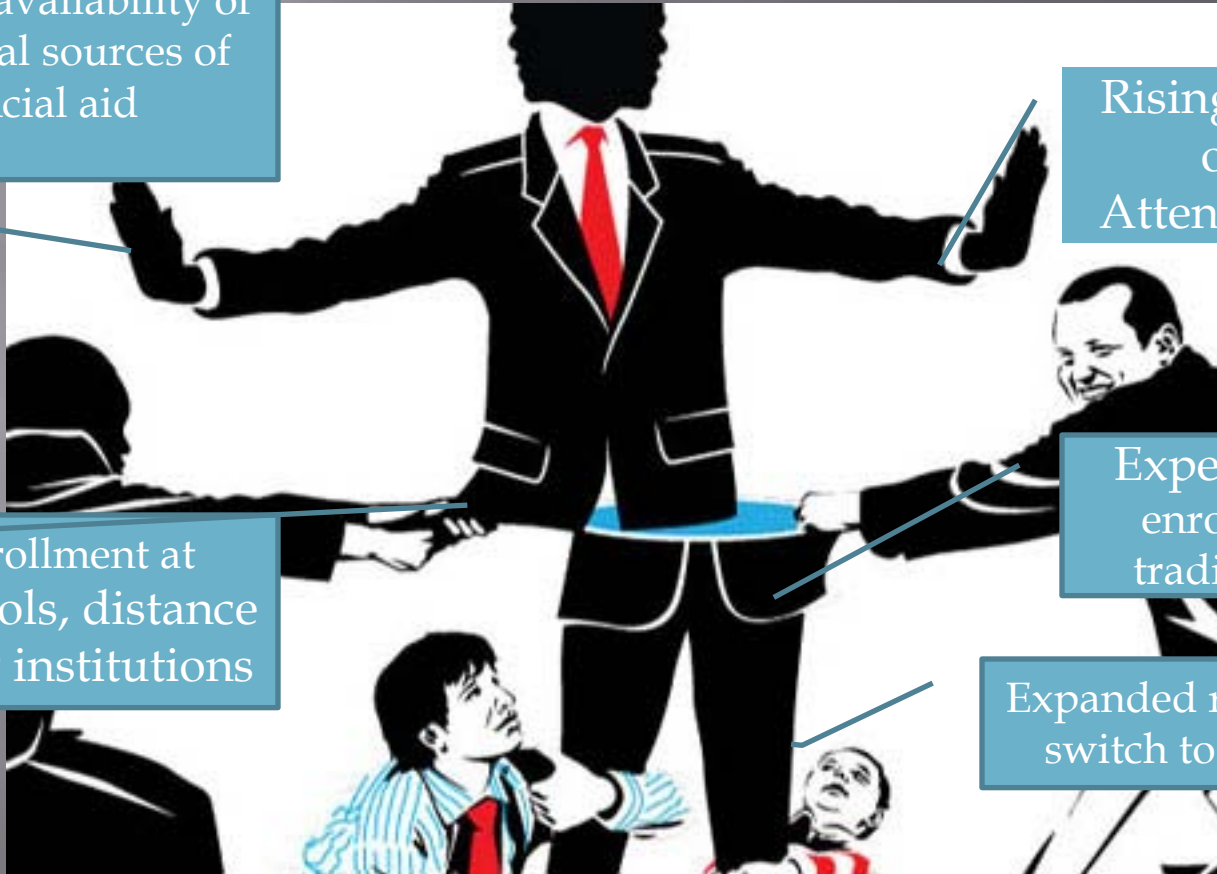
Decline in availability of non-federal sources of financial aid

Rising Cost of Attendance

Expected increase in enrollment of non-traditional students

Growth in enrollment at proprietary schools, distance learning & 2-yr institutions

Expanded role of FSA due to switch to Direct Lending



September 30, 2010: Third Harkin Hearing

- ▣ Whistleblower testimony alleging placement data manipulation and intimidation by for-profit school
- ▣ Testimony alleging for-profit schools cause system class-stratified postsecondary education
- ▣ But Senators Enzi and McCain cry foul.

For-Profits' Perfect Storm



A sunset over a vast, choppy ocean. The sun is a bright white circle on the horizon, casting a warm glow. The sky is filled with soft, grey clouds. The water is a deep blue with white-capped waves.

PROGRAM INTEGRITY REGULATIONS

Changes on the Horizon

GAINFUL EMPLOYMENT PROPOSED REGULATIONS

Gainful Employment Proposed Regulations: To Whom They Apply

- ▣ Public & nonprofits that provide one-year training programs that leads to a certificate or other recognized educational credential;
- ▣ Proprietary institutions *except* those that provide liberal arts baccalaureate program

GAINFUL EMPLOYMENT PROPOSED REGULATIONS

REPORTING & DISCLOSURE REQUIREMENTS *EFFECTIVE 7/1/11*

- ▣ Requires covered institutions to submit disclosures regarding their “program completers” and their programs.

METRIC FOR ASSESSING GE *EFFECTIVE 7/1/12*

- ▣ Loan Repayment Rate Metric
- ▣ Debt to Income Ratio

PROGRAM APPROVAL *EFFECTIVE 7/1/11*

- ▣ For *all* new programs schools must :
 - ▣ Project student senrollment for next 5 years per location;
 - ▣ Provide employer documentation:
 - ▣ Affirming curriculum aligns with occupation;
 - ▣ Establishing job vacancies/ demand at employer’s business.
- ▣ ED can restrict enrollment based on employer job projections
- ▣ **ED WILL restrict all new program growth until GE data available.**

GAINFUL EMPLOYMENT: REPORTING AND DISCLOSURE REQUIREMENTS



Gainful Employment: Annual Reports to ED


- ▣ Identity of all Program Completers
- ▣ Classification of Instructional Program (CIP) Code
- ▣ Date students completed program
- ▣ Amount student received in private educational loans and institutional financing plans

Gainful Employment: Website Disclosures

- ▣ Names and SOC codes for the occupation for which each program is intended to prepare students
- ▣ Links to O*Net occupational profiles
- ▣ On-time graduation rate for students entering each program
- ▣ Program costs, including tuition, fees, room, board other typical costs
- ▣ Beginning 6/30/13, placement rates for Program Completers under 34 C.F.R. 668.8 or state-sponsored workforce data system
- ▣ For Program Completers in preceding 3 years:
 - Median loan debt from Title IV
 - Median loan debt from private educational loans and institutional financing plans

GAINFUL EMPLOYMENT:

METRIC FOR ASSESSING GAINFUL
EMPLOYMENT



Gainful Employment Metric:

Alternative Means of Establishing Program Eligibility

LOAN REPAYMENT RATE

- ▣ At Least 35% Loan Repayment Rate
 - Calculated by determining how much of outstanding balance of T4 loans over last 4 FYs had a reduction in principal in last FY measured.

DEBT-TO-INCOME RATIO

- ▣ Annual loan payment is:
 - For 3-year period:
 - ▣ 30% or less of discretionary income OR
 - ▣ 12% or less of average annual earnings
 - OR
 - For prior 3-year period:
 - ▣ Less than 20% of discretionary income OR
 - ▣ Less than 8% of average annual earnings.

GAINFUL EMPLOYMENT METRIC

Loan Repayment Rate

Gainful Employment Metric: Loan Repayment Rate Calculation

Original Outstanding Principal Balance (OOPB)
of Loans Paid in Full (LPF) + OOPB of Reduced
Principal Loan (RPL)

OOPB of all loans for students in program

Gainful Employment Metric: Loan Repayment Rate Numerator

- ▣ Consolidated loans not considered until the entire consolidated loan is paid off or principal (including capitalized interest) is reduced in most recent FY.
- ▣ Loans where payments during most recent FY qualify for Public Service Loan Forgiveness included even where no reduction in principal.
- ▣ Loans in deferment or forbearance *not* included

GAINFUL EMPLOYMENT METRIC

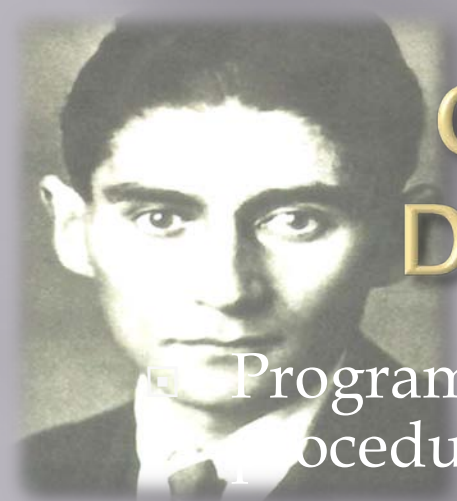
Debt-to-Income Ratio

Gainful Employment Metric: Debt-to-Income Ratio Alternative Means of Establishing Eligibility

- ▣ In 3 most recently completed award years (3YP) prior to “earnings year” (most recent calendar year for which data available) “annual loan payment” (based on median loan debt for program completers during 3YP and 10-yr repayment schedule and current interest rate on unsub loans) is:
 - 30% or less of discretionary income or
 - 12% or less of average annual earnings
- ▣ In 4th, 5th and 6th most recently completed award years (P3YP) prior to earnings year, “annual loan payment” (based on median loan debt for program completers during P3YP) is:
 - Less than 20% of discretionary income or
 - Less than 8% of average annual earnings.

Gainful Employment Metric: Debt to Income Ratio Definitions

- ▣ *Discretionary income*: The difference between the average annual earnings and 150% of the most current Poverty Guideline for a single person in continental US.
- ▣ *Average annual earnings*: Most currently available actual, average annual earnings for program completers during 3YP or P3YP obtained from a “Federal agency.”
- ▣ *Median loan debt*:
 - Incurred by program completers during 3YP or P3YP
 - Based on 10-year repayment schedule
 - Based on current annual interest rate on Federal Direct Unsub loans
 - Includes Title IV (except PLUS) , **private educational loans, and institutional financing plans.**
 - Does not include debt from student attendance at prior or subsequent institutions unless institutions were under common ownership or control or otherwise related entities.



Gainful Employment: Due Process Concerns

- ▣ Program ineligibility subject to subpart G termination procedures.
- ▣ Hearing official must accept as accurate *average annual earnings* used for debt-to-income ratio received from *another Federal agency*.
- ▣ The only matter subject to review is that the earnings data is for the correct cohort of program completers.
- ▣ Neither ED nor the school will be able to review the wage information
- ▣ Hearing official may consider school's earnings data to challenge ED earnings data "so long as that information is for the same individuals and determined to be reliable."

Gainful Employment Metric: Restricted Status

- ▣ Less than 45% Loan Repayment Rate AND
- ▣ Annual Loan Payment of more than 20% of discretionary income AND
- ▣ Annual Loan Payment more than 8% of average annual income AND
- ▣ Meets at least one of the alternative means of establishing program eligibility.

Gainful Employment Metric: ED Chart Showing Proposed 3-Tier GE Classification

		Debt Burden		
		Above 12% of Total Income and Above 30% of Discretionary Income	Between	Below 8% of Total Income or Below 20% of Discretionary Income
Repayment Rate	Rate Above 45%	Fully Eligible	Fully Eligible	Fully Eligible
	Between 35% and 45%	Restricted	Restricted	Fully Eligible
	Rate Below 35%	Ineligible	Restricted	Fully Eligible

Gainful Employment Metric: Conditions Attached To Restricted Status

- ▣ Institution placed on provisional certification.
- ▣ Must annually provide employer affirmations regarding adequacy of program curriculum and projected demand and vacancies for occupations.
- ▣ Must make debt warning disclosure in promotional, enrollment, registration, “and in all other materials, including those on its website, and in all admissions meetings with prospective students:
 - That students may have difficulty repaying loans
 - Most recent loan repayment rate
 - Most recent debt-to-income ratio
- ▣ Title IV enrollment is limited to average number enrolled during prior 3 award years.



Gainful Employment: Consequences of Violation

- ▣ Program Ineligibility:
 - No Title IV funds may be disbursed to students who begin attending after date specified by ED
 - School may disburse Title IV to students who began attending before date of ineligibility for remainder of award year and for award year following date of notice.

- ▣ Provisional Certification of Institution if one or more programs:
 - Fail metrics test;
 - Are placed on restricted status.



INCENTIVE COMPENSATION PROPOSED REGULATIONS

Removal of Safe Harbors

Incentive Compensation: Statutory Language

The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

20 U.S.C. 1094(a)(20)

Incentive Compensation: Removal of Safe Harbors

- ▣ ED reiterates statutory language
- ▣ Defines “incentive compensation”: An award of a sum of money or something of value paid to or given to a person or entity for services rendered.
- ▣ Defines “securing enrollments or the award of financial aid”: Activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.
- ▣ Merit-based compensation adjustments permitted so long as not based directly or indirectly on success in securing enrollment or award of financial aid.
- ▣ Making payment to 3rd party lead information permitted so long as payment not based on number of students who enroll.

Incentive Compensation:

Success in Enrollment/Award No Longer Even Factor

- ▣ Success in securing enrollment or award of financial aid may no longer be even one factor among several in assessing compensation.
- ▣ Could compel reliance on subjective factors for compensation such as enthusiasm, dedication, etc., which could lead to allegations of discrimination.

Incentive Compensation: Applies to Senior Management

*“The Department’s position is that section 487(a)(20) of the HEA is clear that the incentive compensation prohibition applies **all the way to the top of an institution or organization**. Therefore, individuals who are engaged in any student recruitment or admissions activity or in making decisions about the award of student financial aid are covered by this prohibition.”*

Preamble to proposed regulations

Incentive Compensation: Example of Implications for Senior Management

ED proposes to remove safe harbor that permits compensation based on program completion.

Incentive Compensation: Excerpt from State University Coach's Contract

6. Football Team attains a Graduation Rate of:

(as defined by NCAA rules)

50% Graduation Rate	-	\$ 20,000
55% Graduation Rate	-	\$ 30,000
60% Graduation Rate	-	\$ 40,000
65% Graduation Rate	-	\$ 60,000
70% Graduation Rate	-	\$ 80,000
75% Graduation Rate	-	\$100,000

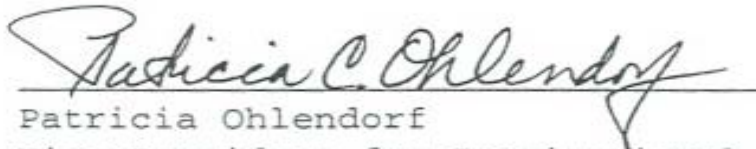
Incentive Compensation

THE UNIVERSITY OF TEXAS AT AUSTIN



DeLoss Dodds
Athletics Director

Date 3/11/02



Patricia Ohlendorf
Vice President for Institutional Relations and
Legal Affairs

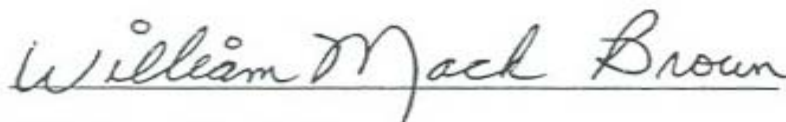
Date 3/11/02



Kevin Hegarty
Vice President and Chief Financial Officer

Date 3/22/02

HEAD FOOTBALL COACH



William Mack Brown

Date 3-7-02

Incentive Compensation: Would any Safe Harbors Remain Safe?

“To the extent that a safe harbor created an exception to the statutory prohibition found in section 487(a)(20) of the HEA, its removal would establish that such an exception no longer exists, and that the action that had been permitted is now prohibited. ”

Preamble to proposed regulations.

Incentive Compensation: Potentially Safe Safe Harbors

- ▣ Profit-sharing bonus plans
- ▣ Profit distributions
- ▣ Payments to third parties for non-recruitment activities (definitely permitted: payments to third parties for provision of student contact information so long as payment not based on number of students who apply or enroll).

SO, WHAT TO DO



Plan, Plan, Plan

- ▣ Review final regulations when released
- ▣ Meet with compliance officers and legal counsel to discuss impact on current practices and procedures
- ▣ Schedule time goals for:
 - Software program modifications
 - Revisions of policies and procedures
 - Catalog revisions
 - Training of staff

Don't Panic

What, Me Worry?



Winds May Be Changing

- ▣ 6/24/10: Harkin criticized by Tom Matzzie, Leader of Accountable America, for having Eisman as witness: “The U.S. Senate shouldn't have a leading role in a Wall Street investor's ‘gambling’ -- especially a short-seller.”
- ▣ 7/1/10: Citizens for Responsibility and Ethics (CREW) sent letter to Harkin criticizing him for failing to adequately disclose financial interest of M. Eisman
- ▣ 7/9/10: Pro Publica Exposes Investment Firm for Organizing Petition Drive by Homeless Shelters Claiming For-Profits Recruit Their Residents
- ▣ 9/9/10: Over 90,000 comments submitted in Gainful Employment NPRM
- ▣ 9/30/10 Harking Hearing: Senate Republicans Cry Foul

END

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