

HEOA Final Regulations & Program Integrity Rulemaking

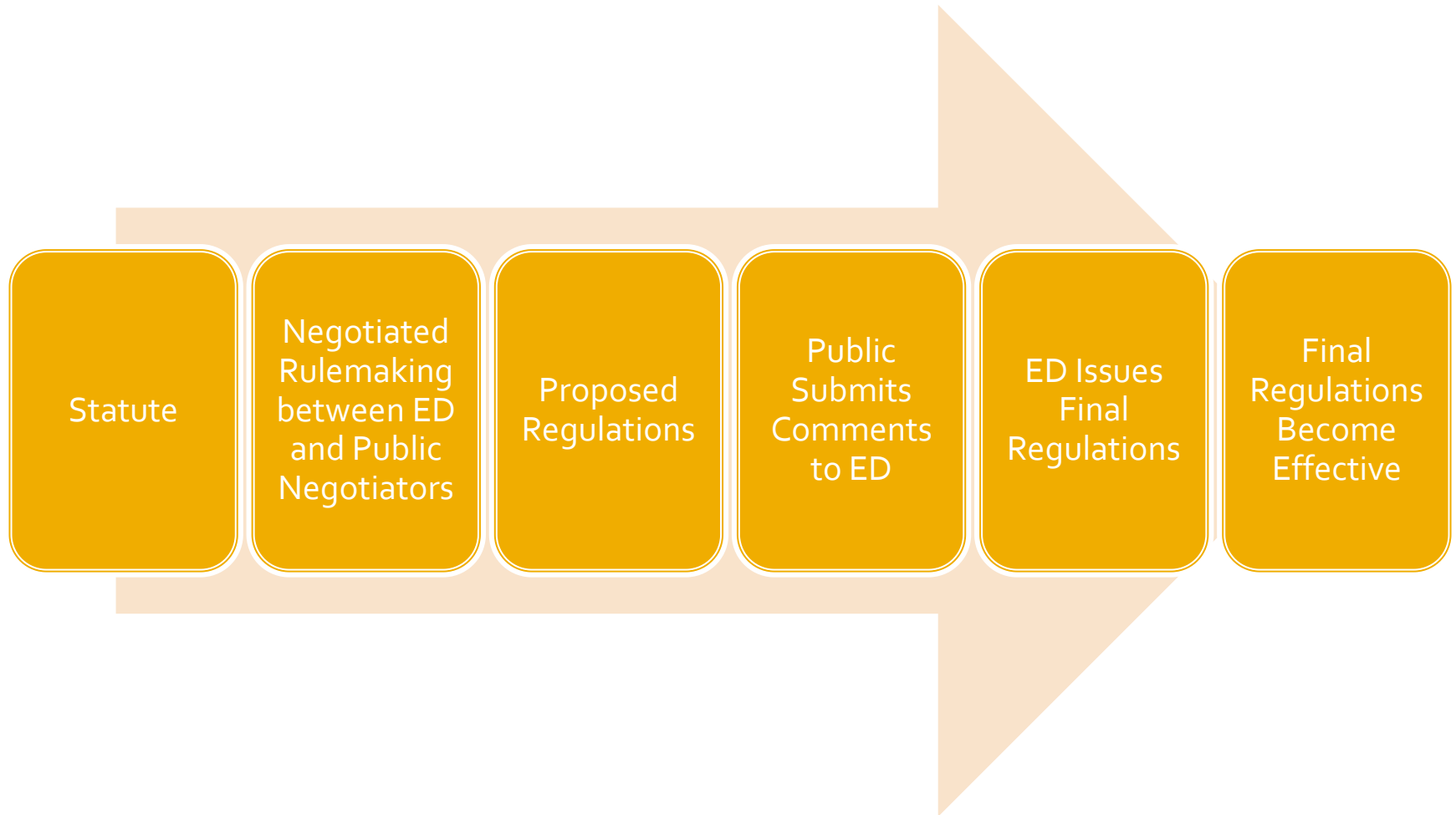
El Paso Association of Career
Schools

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Yolanda R. Gallegos

GALLEGOS LEGAL GROUP

RULEMAKING PROCESS



90-10 , CDR, and Year-Round Pell: The Good, the Bad, and the Ugly

CHANGES TO COHORT DEFAULT RATE CALCULATION METHODOLOGY

Effective for 3-year period
ending FY 2011

COHORT DEFAULT RATES: Same or Similar Provisions

- Over 40% in one year = loss of FFEL & Direct;
- 3 consecutive years at or over threshold =, loss of FFEL, Direct, & Pell;
- Loss of eligibility of FY in which school notified and for next 2 FYs;
- Loss of eligibility not in effect while request for adjustment or appeal pending;
- Panoply of appeals still available.



COHORT DEFAULT RATES: Threshold Rates Changed

OLD LAW

- Statutory threshold set at 25% for FYs after 1993

HEOA

- Statutory threshold increased to 30% for FY 2012 and thereafter

COHORT DEFAULT RATE: Expansion of Time Period Included in CDR

OLD LAW

- Counted loans that defaulted before end of fiscal year following FY in which students entered repayment (2-yr period).

HEOA

- Counts loans that default before end of second FY following FY in which students entered repayment (3-yr period).

Cohort Default Rate: Impact of Adding Year to CDR Period

Institution Type	Projected 4-Year Rate	Projected 3-Year Rate	Current 2-Year Rate
Public	9.5%	7.2%	4.7%
Private (non-profit)	6.5	4.7	3.0
Proprietary	23.3	16.7	8.6
Less than 2-year	26.6	18.5	8.9
2-to 3-year	27.2	19.5	9.9
4-year or more	19.2	13.7	7.3

COHORT DEFAULT RATE: When will impact of new methodology be felt?

When CDR for FY 2009, 2010, and 2011
are all issued.

COHORT DEFAULT RATE: Transition Chart

FY Student Entered Repayment	No. of Yrs. Considered In CDR	Yr. CDR Released	Threshold Percentage
2007	2	2009	25
2008	2	2010	25
2009	2	2011	25
2009	3	2012	25
2010	2	2012	25
2010	3	2013	25
2011	2	2013	25
2011*	3	2014	30
2012	3	2015	30
2013	3	2016	30

COHORT DEFAULT RATE: ED's Publication of "Unofficial Trial" 3-Year Rates

- **December 7, 2009:**
 - ED publishes projected "unofficial trial" CDRs based on 3-year methodology for FYs 2005, 2006, and 2007.
 - Available only to schools: www.nslidsfap.ed.gov
- **December 14, 2009:**
 - ED make these projected rates available to public
 - Will publish on website separate from website for official CDRs to avoid confusion: www.FSADataCenter.ed.gov.

No benefits or sanctions associated with these unofficial rates.

Changes to 90/10 Formula

90/10 CALCULATION: What's New

- New ways to reduce numerator (Title IV funds)
- New ways to increase denominator (all revenue received for tuition and fees)
- Opportunity to use different accounting method
- Some changes temporary; some permanent.

90/10: New Calculation Methodology

Title IV funds for tuition, fees, & charges (**minus unsub loans in excess of pre-ECASLA limits**)



All revenue from:

- Tuition, fees, & charges for Title IV students;
- Revenue from activities necessary for training students in Title IV programs **& non-Title IV programs;**
- **Non-Title IV program revenue; and**
- **Unsub loan amount in excess of pre-ECASLA limits (with conditions)**

*New HEOA items in red.

90-10:

Revenue from Non-Title IV Program Counted as Revenue in Calculation

- Paid for by student or on behalf of student by third-party;
AND
- State agency-approved or licensed;
- Accredited by ED-recognized accrediting agency; (or)
- Provides industry-recognized credential or certification **or prepares students to take certification examination issued by an independent third party.**
- **Provides State licensing training; OR**
- **Provides training needed for additional licensing requirements for specialized training for practitioners that already meet general licensing requirements in that field.**

*Red = contained in regulations

90-10: Loan Amounts in Excess of Pre-ECASLA Limits

Schools May Count Unsub Loan Revenue in Excess of Pre-ECASLA Limits as Non-Title IV Revenue for Loans “Made” On or After July 1, 2008 and Before July 1, 2011.

90-10

Recording Pre-ECASLA Funds

- Funds should be allocated on payment period basis.
- Implications for cases where student withdraws and funds are refunded.

90-10: Institutional Scholarships Rebut Presumption

- Academic or Need-Based
- In the Form of Monetary Aid or Tuition Discounts
- Counted in the FY in Which it was Disbursed
- Derived from a Restricted Account; AND
- Designated from an Outside Source OR from Income Earned on Those Funds

90-10:

Student Aid and Fiscal Responsibility Act of 2009

SAFRA would:

- Expand pre-ECASLA fund provision through 2012 rather than through 2011.
- Allow funds from the proposed Direct Perkins Loan program to be treated as non-Title IV revenue until July 1, 2012;
- Give proprietary schools three years (as opposed to two) to come into compliance with 90/10 provisions; and
- Give schools two years (as opposed to one) of noncompliance before they would be moved into provisional eligibility status.

90-10: Institutional Loans Accrual Method-Temporary

- To be able to account for as revenue, loans must be:
 - **Bona fide as evidenced by standalone repayment agreements that are** enforceable prom notes;
 - Issued at intervals related to enrollment periods; repayments
 - Subject to regular loan and collections **by the institution;****AND**
 - **Separate from the enrollment contract.**
- **Includes funds advanced to students under installment sales contracts.**
- **Proposed Preamble states that:**
 - **Loans purchased by institution or sold by institution to third party excluded;**
 - **Funds would have to be credited in full to the students' account.**

July 1, 2008 to July 1, 2012

Red = Proposed regulations only

90/10

Proposed Regulations: Institutional Loans Alternate to NPV

Alternative to Net Present Value Formula:

- 50 % of the total amount of loans that the institution made during the relevant fiscal year.
- Two-year prohibition on selling loans.

90-10: Moved to PPA Section of HEA

90-10 provision moved from definition of
“proprietary institution of higher education”
to PPA section of HEA.

90-10: Sanctions

- Termination from Title IV programs if institution fails to meet 90/10 for two consecutive fiscal years;
- Provisional certification if institution fails to meet 90/10 in any one fiscal year.
- ED publishes list of schools which do not meet 90/10 in any one fiscal year;

YEAR-ROUND PELL:

Award of Pell from Two Scheduled Awards in
One Award Year

YEAR-ROUND PELL: The Statute

- A student is entitled to a second Pell Grant to permit the student to “accelerate the student’s progress” toward a degree or certificate if student is enrolled:
 - at least a half-time basis;
 - for a period of more than one academic year, or more than two semesters or an equivalent period of time;
 - during a single award year; and
 - in a degree or certificate program

YEAR-ROUND PELL: The Question

What does “to accelerate the student’s progress” mean?



YEAR-ROUND PELL: Debate on Acceleration

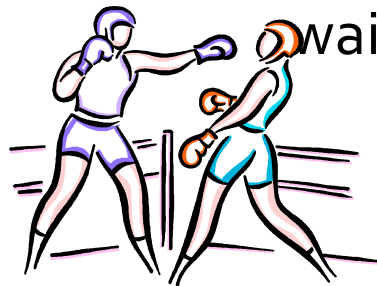
NON-FED NEGOTIATORS

Even part-time students should be able to get second Pell where courses cross over to second academic year within one award year.

US DEP'T OF EDUCATION

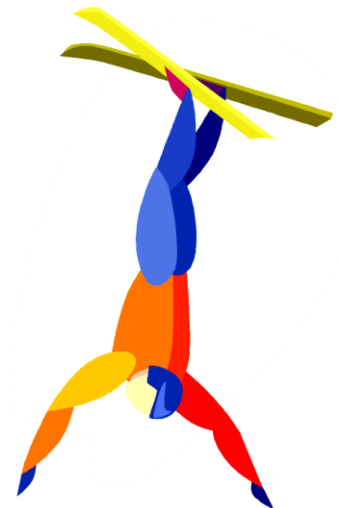
Student must complete one full academic year's worth of credits of first academic year before becoming eligible for second Pell.

Special circumstances waiver.



YEAR ROUND PELL: Final Regulations ED Reverses Position

- Student Enrolled:
 - On at least half-time basis;
 - For credit or clock hours that are attributable to the student's second academic year;
 - During a single award year; and
 - In a degree or certificate program



YEAR-ROUND PELL: Example of Application of Final Regulations With \$5000 Scheduled Award*

Sept. 2010 Term	Jan. 2011 Term	May 2011 Term
6 credits	12 credits	12 credits
\$1250	\$2500	\$1250+ \$1250 for second Pell

*Assumption of 24-credit academic year

YEAR-ROUND PELL: When to Implement Regulations?

2009-10 AWARD YEAR

- To Eligible Students as Determined by:
 - NPRM language
 - Final regulation requirements; **OR**
 - Statutory Requirements Only:
 - Enrolled in certificate, associate, or baccalaureate program; **AND**
 - Enrolled at least half-time at time any funds from the Second Scheduled Award are awarded.

2010-11 AWARD YEAR AND ON

- To Eligible Students as Determined by **Final Regulations:**
 - Enrolled in certificate, associate, or baccalaureate program;
 - Enrolled on at least half-time;
 - **Enrolled in credit or clock hours that are attributable to student's second academic year.**

PROGRAM INTEGRITY NEGOTIATED RULEMAKING

What to Expect



Satisfactory Academic Progress: Frequency of Evaluation Increments

CURRENT REGULATION

- SAP evaluation must take place the lesser of one "academic year" or ½ the published length of the program.

REGULATION UNDER CONSIDERATION

- SAP evaluation must take place:
- For program one academic year or less:
 - At the end of each payment period;
- For all other programs:
 - At the end of each payment period OR
 - At least "annually."

Satisfactory Academic Progress: Probationary & Warning Periods

- Student not meeting SAP may continue to receive Title IV aid **for payment period following payment period SAP not met:**
 - For institutions that evaluate SAP **at the end of each payment period:**
 - For **warning period** with no conditions; OR
 - For **probationary period** if:
 - Student appeals AND
 - School determines student can make SAP at the end of next payment period; OR
 - School develops academic plan for student to meet SAP by “specific point in time;” AND
 - For **probationary period** after **warning period** if:
 - above probationary conditions met
 - For institutions that evaluate SAP **annually or less frequently** than at end of each payment period:
 - For **probationary period** if above probationary conditions are met.

Satisfactory Academic Progress: Appeals

- Appealing students must submit information explaining:
 - Why the student failed to make SAP; and
 - What has changed in the student's situation that will allow the student to demonstrate SAP at the next evaluation;
 - Basis for appeal may be:
 - Death of relative;
 - Injury or illness of student; OR
 - Other special circumstances

Incentive Compensation



- Elimination of safe harbors;
- Reiterating statutory language that prohibits “provid[ing] any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial to any persons or entities engaged in any student recruiting or admission activities or in making decision regarding the award of student financial assistance” and eliminating almost all current regulatory guidance.
- Permitting merit-based compensation adjustments, **so long as they are not based on success in securing enrollment.**
- Wants to eliminate number of enrollments even as a factor in compensation adjustment.
- Broadening applicability of prohibition to include not only those involved with recruitment, admission, or award of Title IV, but also to those involved with award of any student financial assistance.

Gainful Employment in a Recognized Occupation: “Recognized Occupation”

- Updates reference source for list of occupations from *Dictionary of Occupational Titles* to:
 - DOL’s *Standard Occupational Classification (SOC)*
OR
 - As determined by Secretary of Education in consultation with Secretary of Labor.

Gainful Employment in a Recognized Occupation: "Gainful Employment"

- Debt/Income Ratio May Not Exceed 8%
- Formula:
 - Median annual loan payment for program
 - Annual earnings for the 25th percentile for individuals in that field according to BLS
- Evaluated every 3 award years.

Gainful Employment in a Recognized Occupation: Alternative to Debt/Income Ratio

- **90% repayment rate**
 - Of borrowers included in ratio who are in repayment, excluding those in in-school or military deferment, 90% or more are in active repayment (not delinquent, in default, in other deferment or forbearance status);
- **Actual earnings of students in ratio is higher than BLS data**
 - Substantial number of students included in ratio actually earned more than BLS data and use of actual earnings results in school meeting 8% requirement;

R2T4:

Institution Required to Take Attendance

PRESENT RULE

- Institution Required to Take Attendance if :
 - “Outside entity,” such as accrediting or State agency so requires.

RULE UNDER CONSIDERATION

- Institution Required to Take Attendance if:
 - “Outside entity,” such as accrediting or State agency so requires;
 - **Institution itself requires instructor to take attendance; or;**
 - **Institution or outside entity has requirement that students in program demonstrate class attendance in program or part of program and compliance can be determined only by taking attendance or comparable process.**

Under Consideration

R2T4: Treatment of Term-Based Module Programs

PRESENT GUIDANCE

- If student completes at least one course in module-based term, student is **not** considered withdrawn even if student fails to attend all modules.

RULE UNDER CONSIDERATION

- If a student withdraws without completing **all the courses** the student is **scheduled to complete**, the student is considered a withdrawal, regardless of whether the student has completed any courses.

Verification



PRESENT RULES

- Institutions must verify some or all of 5 items, as specified by ED.
- Institutions are required to verify applicant information of at least 30% of Title IV applicants
- Institutions must require students to verify any information on FAFSA used to calculate EFC that it has reason to believe is inaccurate.

RULES UNDER CONSIDERATION

- Items to be verified not limited to present 5 items; ED will publish items subject to verification annually in Fed. Reg.
- **Eliminate** limit on % of students that must be verified.
- Institutions must require students to verify any information on FAFSA that it has reason to believe is inaccurate.

High School Diplomas: Verification



PRESENT RULE

- Institutions may rely on self-certification that student has high school diploma or its recognized equivalent unless school has policy to require copy for admission.

RULE UNDER CONSIDERATION

- Imposes obligation on institution to develop procedures for verifying student's high school completion:
 - If the name of entity awarding diploma identified by student in FAFSA not recognized by Secretary, student will be selected for verification and institution will have to verify validity of diploma before Title IV can be awarded;
 - If institution has other reason to doubt validity of diploma, it must evaluate validity before awarding Title IV.

Credit Hour

- Defines semester or trimester “credit hour” as:
 - 1 hr classroom or direct faculty instruction + 2 hrs out-of–class work +approx 15 weeks (or + 10-12 wks for 1 quarter-hour of credit); **or**
 - Comparable amount of work for other academic activities as established by school including laboratory work, internships, practica, studio work, and other academic work;
 - If this formula is not appropriate, institution must:
 - Establish equivalencies based on amount of amount of academic work, learning outcomes, evidence of achievement; and
 - Ensuring equivalencies are in compliance with accrediting agency, State standards, and Title IV.
- Requires credit-hour programs to be considered clock hour programs if:
 - program must be measured in clock hours for any purpose including receiving federal or state approval or licensure
 - Credit hours do not meet above definition of “credit hour”;

State Authorization

PRESENT RULE

- To be Title IV eligible, institution must be “legally authorized to provide an educational program beyond secondary education in the State in which the institution is located.”

34 C.F.R. 600.4, 600.5 & 600.6

RULE UNDER CONSIDERATION

- To be “legally authorized” by a State, institution must:
 - Have charter, license, or other document issued by State that conveys authority to operate postsecondary education and grant degrees in State;
 - Have Action and written documentation by State agency that authorizes, licenses, or otherwise approves institution to establish and operate non-degree program and postsecondary training; **OR**
 - Be a public institution;
 - Be authorized by the Federal Government to offer postsecondary programs;
- Not sufficient if:
 - State authorization is generic type offered to entities that are not postsecondary schools or if based on school’s age
 - State authorization is not subject to review or revocation for cause by State

34 C.F.R. 600.9

Misrepresentation

PRESENT RULE

- Calls for a Subpart G LST proceeding for “substantial misrepresentation” to:
 - Enrolled or prospective student;
 - Family of enrolled or prospective student
- Regarding:
 - Nature of educational program;
 - Financial charges; or
 - Employability of graduates.

RULE UNDER CONSIDERATION

- Expands consequences from LST to also include restrictions or denials of participation;
- Expands targets of misrepresentation to include any member of the public & accrediting and state agencies;
- Expands kinds of misrepresentation to include misrepresentation of advertising, promotional materials, or marketing or sales of courses or programs of instruction, etc.
- Expands prohibition to include even misrepresentations made “indirectly.”

Ability to Benefit

- Would add successful completion of 6 semester, quarter, or trimester credits or 225 clock hours in certificate or degree program as alternative to high school diploma, GED, ATB, "state process," or home schooling;
- Requires ATB publishers to:
 - Have process to identify and follow up on test score irregularities;
 - Take action to decertify test administrators if test administered improperly;
 - Report to ED names of test administrators it decertifies and actions taken resulting from test score analyses.
- Requires test administrators be independent, approved by ED, and certified by test publisher;
- Requires tests publishers to:
 - Describe to ED process for certification of test administrators;
 - Show compliance with Section 504 of Rehabilitation Act.
 - Report to Secretary credible information that test has been compromised;
 - Report to ED's OIG credible information that a test administrator may have engaged in fraud or other criminal misconduct.

Agreements Between Institutions of Higher Education

PRESENT RULE

- Agreements between 2 eligible institutions:
 - Require no accrediting agency approval or review; and
 - No limit on amount of instruction that may be contracted out.
 - No specific notification to students required.

RULE UNDER CONSIDERATION

- Agreements between 2 eligible institutions:
 - Require accrediting agency determination that arrangement meets accrediting agency standards if:
 - More than 50% of the program is contracted out.
- Agreements with eligible or ineligible institutions would requires institutions to disclose to students and prospective students:
 - The portion of the program that the home institution is not providing;
 - The name of the institution that is providing that portion;
 - The method of delivery of that portion of the program;
 - Any additional costs students may incur as a result of the agreement;
 - The authorization of the institution to offer the program in the format being provided.

Disbursement of Title IV Funds

PRESENT RULE

- Requires Title IV funds to be disbursed on a payment period basis.

RULE UNDER CONSIDERATION

- Requires school to disburse directly to student no later than 7th day of payment period the lesser of:
 - Expected student credit balance
OR
 - An amount equal to the allowance for books and supplies used in determining the student's COA for payment period unless school provides another way for student to purchase books and supplies for payment period before that date such as using vouchers at campus bookstore.

END

315 Eighth Street, SW
Albuquerque, NM 87102

(505) 242-8900

(505) 247-8300 (fax)

yolanda@gallegoslegalgroup.com

www.titleivlaw.com

www.gallegoslegalgroup.com

Yolanda R. Gallegos

GALLEGOS LEGAL GROUP