

2009 CCA CONVENTION - Orlando

“Staying Alive, Staying Alive – Implementing Critical HEOA Eligibility and Participation Changes”

Panelists: Larry Brown, Ron Holt, Peter Leyton, Trish Leonard & Rick Thomas

YOUR PANELISTS

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Our Agenda – HEOA Changes



1. **NegReg & Other Guidance**
2. **90-10 Rule**
3. **Default Rates**
4. **Accrediting Agency Rules**
5. **Lender Relationship Rules**
6. **Institutional Reporting & Disclosures**
7. **Some Key Oversight Changes**
8. **Practical Observations on Implementation**

HIGHER EDUCATION OPPORTUNITY ACT

- **Enacted August 14, 2008:** effective same date unless otherwise provided
- PL 110-315 <http://thomas.loc.gov>



HEOA – Implementation Guidance

- **Dear Colleague Letter (GEN-08-12)**
Dec 31, 2008, www.ed.gov/HEOA
- **Good Faith Interpretations**
- **Negotiated Rulemaking – Five Teams met February to May**
<http://www.ed.gov/policy/highered/leg/hea08/index.html#neg-reg>

HEOA Changes – Negotiated Rulemaking

- **Three Teams Reached Consensus**
 - **Team I:** general loan issues - e.g., consumer issues, Truth In Lending disclosures
 - **Team II:** school loan issues, e.g., code of conduct, preferred lenders, private loan certification, CDRs
 - **Team III:** accreditation issues
- **Two Teams Did Not Reach Consensus**
 - **Team IV:** discretionary grants – e.g., migrant, GEAR UP, TRIO
 - **Team V:** general catch-all – e.g., 90/10, Year Round Pell, Teach Out

NEGOTIATED RULEMAKING *continued*

- **Consensus** Binds USDOE To Use Agreed Upon Language For NPRM
- Precludes Negative Comments By Negotiators
- **No Consensus**, USDOE Can Propose Regulatory Language It Prefers
- **NPRMs** Expected Late June/Early July
- **Final Rules** Issued By November 1, 2009, Effective July 1, 2010

I. 90-10: Better Math?

- PPA provision – change in sanctions
- **Same Title IV revenue presumption**
- New detailed calculation instructions
- **New revenue sources:** extra \$2000 unsubsidized loan, school loans, non-T4 programs, scholarships



I. 90-10: Better Math?

PROVISIONS OF NEW LAW

- Now in PPA, instead of institutional definition
- Calculation method – detailed instructions
- New non-Title IV revenue sources
- Specific sanctions for violation
- Disclosure to public
- Reports to Congress on failing schools

I. 90-10: Better Math? *continued*

IMPACT OF MOVE TO PPA

- No longer immediate death penalty
- DOE enforcement discretion
- Over 90.0% 1 year: **provisional for 2 years**
- Over 90.0% 2 consecutive years: **out for 2 years**
- Still applies only to for-profits

I. 90-10: Better Math? *continued*

CALCULATION METHOD

- Much of current regulation now enacted into law
- Several permanent changes
- Two temporary changes
- NegReg defined several issues

I. 90-10: Better Math? *continued*

FORMULA REVENUE INCLUDES:

- Tuition, fees and other institutional charges for Title IV approved programs
- **Activities necessary for education, IF**
 - i) Conducted at facility under school's control
 - ii) Conducted under faculty supervision
 - iii) Required for all students in program
- **Revenue from certain non-Title IV approved programs (NEW)**

I. 90-10: Better Math? *continued*

NEW PROVISION:

NON-TITLE IV PROGRAM REVENUE

CAN BE INCLUDED IF PROGRAM:

- I) Approved or licensed by state agency, **OR**
- II) Accredited by DOE recognized agency, **OR**
- III) Leads to industry-recognized credential or certification

I. 90-10: Better Math? *continued*

EXCLUSIONS FROM FORMULA:

- **Work-study \$\$, unless credited to student's account for institutional charges**
- **LEAP Funds**
- **Institutional matching funds (SEOG)**
- **T4 and other \$\$ refunded or returned**
- **Books, equipment, uniform & supply charges, *unless* properly treated as institutional charges**

I. 90-10: Better Math? *continued*

TITLE IV PRESUMPTION - now in statute **FUNDS NOT SUBJECT TO PRESUMPTION:**

- **Grant funds from non-federal agencies**
- **Outside private source scholarships and grants (independent of institution)**
- **\$\$ from contracts with government job training agencies**
- **Tax qualifying education savings plan § 529**
- **Certain institutional scholarships**

I. 90-10: Better Math? *continued*

QUALIFYING INSTITUTIONAL SCHOLARSHIPS

- i) Provided as cash or tuition discounts**
- ii) Based on merit or need: applications and awards**
- iii) Disbursed from restricted account**
- iv) Counts only if \$\$ come from source outside institution or from investment return on funds donated by institution or shareholders**

I. 90-10: Better Math? *continued*

“EXTRA” \$2000 IN UNSUBSIDIZED LOANS

- Applies to loans disbursed 7/1/08 to 6/30/11
- If disbursements made to student above normal loan limits, **excess disbursement treated as non T4 revenue**
- Similar to non-T4 (private) gap loans
- Does NOT overcome T4 presumption

I. 90-10: Better Math? *continued*

INSTITUTIONAL LOANS: LIMITED PERIOD

- Loans made between 7/1/08 and 7/1/12
- **Promissory note: fixed maturity & collection efforts**
- Can – perhaps **must** – use “**net present value**” (NPV) of loans made during fiscal year, on accrual basis
- Estimated in accordance with GAAP
- **Somewhat complicated NPV formula**

I. 90-10: Better Math? *continued*

CALCULATION OF “NET PRESENT VALUE”

- Formula:

$$NPV = \sum \frac{R_t}{-(1 + i)^t}$$

- Must exclude from 90-10 calculation any installment payments made on loans in current or future fiscal years
- **Fall-back position is 50% of loan amount**

I. 90-10: Better Math? *continued*

CALCULATION OF “NET PRESENT VALUE”

- **Assumptions: (example attached)**
 - **Discount Rate**
 - **Net Cash Flow- or Payment**
 - **Period of Time**
 - **Types and Groups of Loans**
- **Auditable or Supportable Assumptions**

I. 90-10: Better Math? *continued*

90-10 CHANGE SUMMARY

- Moved from institutional definition to PPA
- **2 year provisional for 1 year over 90%**
- 2 year exclusion for consecutive +90 years
- **Expanded revenue base** for calculation, with some non T4 programs and extra \$2000
- Use “**net present value**” for institutional loans or **safe harbor** of **50%** of loan

II. DEFAULT RATE CHANGES – UP & AWAY?

- **New 3 year CDR phase-in**
- **Sanctions – default management plans**
- **Low income appeals – earlier access**
- **Literacy training focus**
- **Entrance/exit counseling**



II. Default Rate Changes *continued*

THREE YEAR Cohort Default Rate Phase-In

- Starts with 2009 CDR
- **Two Sets of Rates: FY 2009 to FY 2011: 2 Year CDR Rates & 3 Year CDR Rates**
- **Two Sets of Rate Appeals for 2009 - 2011 rates: 2 Yr rate appeals, 3 Yr rate appeals**
- Are 'second bite' appeals allowed??

II. Default Rates *continued*: **FY 2009 CDR**

COHORT PERIOD Borrowers entering Repayment during:	October 1, 2008 To September 30, 2009
<u>Two Year Rate:</u> First Additional Performance Year	October 1, 2009 To September 30, 2010
<u>Three Year Rate:</u> Second Additional Performance Year	October 1, 2010 To September 30, 2011

II. Default Rates – *continued*: Transition

ED Release Date	2 Yr Rate	Three Yr Rate
Feb 2011 <i>Draft</i>	FY 2009 <i>Draft</i>	NONE
Sept 2011 Official	FY 2009 Official	NONE
Feb 2012 <i>Draft</i>	FY 2010 <i>Draft</i>	FY 2009 <i>Draft</i>
<u>Sept 2012</u> Official	FY 2010 Official	FY 2009 <i>Offic</i> (1)
Feb 2013 <i>Draft</i>	FY 2011	FY 2010 <i>Draft</i>
<u>Sept 2013</u> Official	FY 2011	FY 2010 <i>Offic</i> (2)
Feb 2014 <i>Draft</i>	NONE	FY 2011 <i>Draft</i>
Sept 2014 Official	NONE	FY 2011 <i>Offic</i> (3)

II. Default Rate Changes *continued*

3 Year CDR Impact

- DOE 2004 CDR study (unmanaged 3rd Yr): >60% Avg
- Rates nearly double at under 2 yr for-profits, HBCUs, and community colleges
- RESPONSE: Admissions, Retention, Counseling, Attendance and Default Management



II. Default Rate Changes *continued*

CHANGES IN SANCTIONS

- Sanctions based only on 2 Year Rates until **September 2014**, then **3 Yr Rates**
- **Sanction ceiling for 3 consecutive rates: goes to from 25% to 30% as of 9/14**
- **Single high CDR ceiling stays at 40%**
- **No single 3 Yr CDR 40%+ counts until 9/14: possible sanctions then for 09 or 10??**
- **ED to post CDRs on College Navigator website**

II. Default Rate Changes *continued*

Sanction Changes *continued*

- **Provisional certification** – now one 2 YR Rate 25%+, but in 9/14 will be two of last three **3 YR Rates** at **30%+**
- **One 3 YR CDR 30%+** - default prevention task force to develop/file plan with Secretary
- **Two 3 YR CDRs 30%+** - revise plan, submit To Secretary and get assistance
- **Benefit ceiling** up to **15%** 10/1/11: no 30 day wait 1st loan disb, no multiple disbursement requirement in non-term programs

II. Default Rate Changes *continued*

LOW INCOME APPEALS

- “Economically disadvantaged” schools
- Available if **2 consecutive 30%+ 3 YR rates**
- **2/3 Low Income & 44% Placement or 70% Grad.**
- Low income: $\frac{1}{2}$ max Pell or below HHS poverty
- File appeal w/i **30 days** of rate notice eff date, file **auditor’s opinion** w/i **60 days**
- Successful appeal: **exempt** from exclusion **1 year** w/o provisional certification
- Need **3rd party documentation** of employment

II. Default Rate Changes *continued*

Other CDR Appeals

1. Official Rate Adjustments – Uncorrected (UD)
New Data (ND): LRDR changes
2. Loan Servicing Error Appeals
3. Erroneous Data Appeals (sanction level rates)
4. Low Borrower %: PRI, Avg Rates, <30 borrowers
 - **Appeal Clock**: starts **6th business day** from e-posting
 - ND Req, Error Req, Loan Rec Reqs: 15 Days
 - Low Income or Borrower % & UD: 30 Days

II. Default Rate Changes *continued*

Literacy Training Focus

- ED's default management plan **DCL Gen 05-14**: cross campus training on **student financial literacy**: management of income, expenses & debt service
- **Guaranty Agencies** to develop financial literacy programs & materials; also ED, Ag. & Treas. Depts. to identify best literacy programs **HEOA §435, 1042**
- **Urge lower loans** & cash payments, with later tax credit up to \$2500 from Stimulus Bill for homes with up to \$160K income (can't deny max loan)

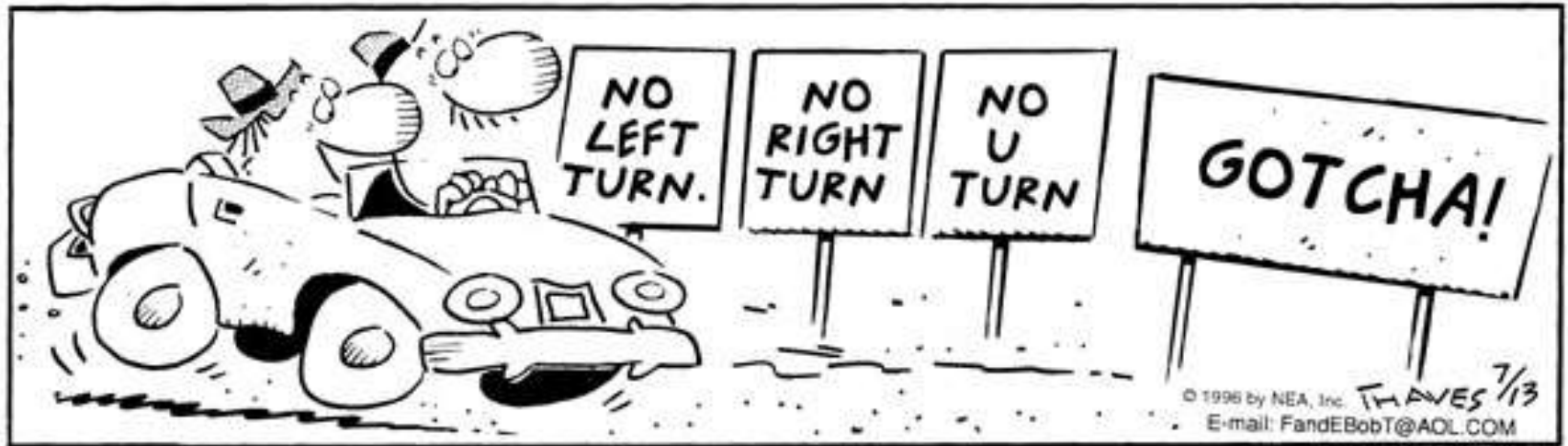
II. Default Rate Changes *continued*

ENTRANCE & EXIT COUNSELING

- **Entrance**: comprehensive info on MPN terms, obligations, interest, HT req, default consequences, payment amounts, use of NSLDS, contact persons
- **In person, written or online**
- **Interactive programs** encouraged
- **Exit**: repayment plans (income contingent or PFH 15% of borrower's income over 150% poverty), debt management (deferments & forbearances), default consequences, forgiveness programs, contact info

III. Accrediting Agencies – New Rules

- **Distance Education – definition, integrity**
- **Student achievement standards**
- **Transfer of credit**
- **Growth monitoring**
- **Due process – appeals, financial issues**



III. Accrediting - New Rules *continued*

- **Distance Education (DE) Basic Definition:**

Instruction to students separated from instructor, synchronously or asynchronously

- **Technologies used can include:**

Internet, Open Broadcast, Closed Circuit, Cable Microwave, Broadband Lines, Fiber Optics, Satellite, Wireless, Audio Conferencing, Video Cassettes, DVDs, CD Roms

III. Accrediting - New Rules *continued*

DISTANCE EDUCATION (DE) *continued*

- **Accrediting standards** must effectively address **quality** of institution's Distance Education
- Agency **not** required to have **separate DE standards, policies & procedures**
- Institutions required to **verify student identity** and **protect student privacy**
- **Options** include: Secure Login, Proctored Examinations, New Technologies As Developed (e.g., biometric)

III. Accrediting - New Rules *continued*

- **Student Achievement Standards**: different standards may exist for different kinds of institutions or programs
- **Transfer Of Credit (TOC)**: accreditors must confirm institution have TOC policies which:
 - i) are **publicly disclosed**; and
 - ii) include **statement of criteria** established by institution regarding TOC earned at another school

III. Accrediting - New Rules *continued*

Monitoring Of Significant Growth

- Accrediting agency must monitor and evaluate **capacity** of accredited institutions or programs for **significant enrollment growth** as defined by agency
- Periodic enrollment growth **reports** required at **least annually**
- Must monitor **DE enrollment headcount** and report any **50%+ enrollment increase** in 1 FY to **USDOE** w/in 30 days, under limited circumstances

III. Accrediting - New Rules *continued*

- **Agency Contacts with USDOE** about schools must be kept **confidential** at **USDOE** request
- **Due Process in Accreditation Decisions:**
 - i) Clear written accreditation **standards** consistently applied
 - ii) Detailed **written reports** clearly identifying **deficiencies** before adverse action
 - iii) Agency must provide school sufficient **opportunity** to **respond** to complaints

III. Accrediting - New Rules *continued*

- **Accrediting Appeal Process:**
 - i) Right to appeal to a **decision making Appeals Panel** with **authority** to affirm, amend or reverse
 - ii) **Panel** may **not** include as members **persons** who took **adverse action**
 - iii) Agency must publish and follow written **conflict of interest policy**
 - iv) Agency must allow school to bring **legal counsel** to hearing

III. Accrediting - New Rules *continued*

- **Special Provision on Consideration of *New Financial Information* - When**
 - i) Information **unavailable** prior to appeal;
 - ii) New information is **significant & material**;
 - iii) Only remaining issue for **adverse action** is **financial condition**; and
 - iv) Institution may seek consideration of new information only **once** and decision about review of information not subject to appeal

IV. New Lender Relationship Rules

- Preferred Lender Lists
- Code of Conduct
- Private Loan Certifications



IV. New Lender Rules *continued*

Preferred Lender Lists

- New **PPA provision**: applies to both **T4** and **private loans**
- Must be **reviewed annually**
- **Report to ED** annually (no due date yet)
- Not required to have preferred lender list
- For **private lenders**, disclosures must comply with **TILA**
- ED to provide **model disclosure form** (2/2010)

IV. New Lender Rules *continued*

- **Preferred Lender List** must include:
 - i) 3 **unaffiliated TIV lenders**
 - *2 unaffiliated private lenders
 - ii) **Selection criteria**: borrower benefits
 - iii) Student's **right to use other lenders** - clear notice
 - iv) **Identification** of **affiliated** lenders
 - v) Comparison of **terms** for lenders
 - vii) **Published** on web and other publications
- ***Not clear if giving names of lenders making loans at school is same as preferred list**

IV. New Lender Rules *continued*

CODE OF CONDUCT

- All institutions in FFEL program must have Code of Conduct posted on web site
- Code must avoid conflict of interest
- Financial aid Staff must be informed annually and trained
- Some States specify terms for Code of Conduct

IV. New Lender Rules *continued*

Conflicts of Interest Avoided by **Prohibiting:**

- i) Revenue sharing
- ii) Gifts of more than a de minimus amount
- iii) Consulting or contracting arrangements
- iv) “Auto” packaging first time loans with a specific lender
- v) Requiring specific lenders/refusal to certify with other lenders
- vi) Staffing assistance, except emergency
- vii) Advisory board compensation, except reasonable travel costs and DOE report
- viii) No linkage to opportunity pool private loans or preferred lender status

IV. New Lender Rules *continued*

Conflicts – Gift Exceptions:

- i) Standard materials, workshops, training on loan issues, default prevention or financial literacy
- ii) Favorable terms for all students can include school employee students
- iii) Professional development training and training materials – even snacks!
- iv) Student Entrance and Exit counseling
 - Not promoting lender products/services
 - School must supervise
- v) Philanthropic contributions not tied to loan volume

IV. New Lender Rules *continued*

Private Loan Certifications

- If lender information provided, school must provide private education loan disclosures
- Must inform prospective borrowers about:
 - Availability of TIV aid and
 - Effect of private borrowing on TIV eligibility
- Must provide self-certification form if requested (ED to develop) including:
 - disclosures, COA, EFC, EFA, Need, Signature (written or electronic)

V. New Reporting & Disclosures

- **Additional Data** to Track
- **Tuition Increases**
- Consumer **Disclosure** Policies



V. Reporting & Disclosures *continued*

More Statistical Data

- If not now collected, Need **database & form updates** – be prepared!
- School's **web site** increasingly important
- **Types of Extra Data:**
- FT/HT, in or out state
- Race, gender, transfers
- SAP, COA. Aid%
- Avg grant/loan \$\$

● **More Data Fields**

- Total aid \$\$
- Disabled #
- Degrees/certificates
- Student/faculty ratio
- Faculty #(FT/PT/assts)
- Tuition costs (3-yr avg)
- Net price
- Income ranges (by 2010)
- Avg change net tuition

V. Reporting & Disclosures *continued*

“College Tuition Transparency for Consumers”

- Schools provide data ED uses to annually publish
 - **Tuition** for **9 categories** of institutions
 - As of July 2011, ED to publish lists of:
 - 5% highest** tuition or net costs institutions
 - 5 % largest** 3 YR tuition **increase** institutions
 - *Must give report explaining increases and steps to control & reduce costs.
 - iii) **10% lowest** tuition or net costs institutions

V. Reporting & Disclosures *continued*

Additional Reporting and/ Disclosures

- Campus Crime/Safely Disclosure
- Drug-Related Violations
- Entrance & Exit Counseling
- Fire and Safety (schools with on-campus housing)
- Missing Persons (if on-campus housing)
- Transferring Credit
- Drug & Alcohol Abuse Prevention Programs

V. Reporting & Disclosures *continued*

New Policies & Information

- Any **program improvement** plans
- Terms & conditions for **Federal student loans**
- Institutional policy **copyright infringement**
- Student body **diversity** by FT Pell recipients, gender & ethnicity
- **Placement** & types of **employment** for graduates
- **Graduate/professional programs** attended by school's graduates
- **Fire safety** report
- **Retention rates** of certificate & first-time full-time degree seeking undergraduates
- Institutional **vaccination** policies

V. Reporting & Disclosures *continued*

- Data to be made available through the **College Navigator Website:**
 - <http://nces.ed.gov/collegenavigator>
- 2-year degree granting institutions exempt until July 2011

VI. Key Oversight Changes

- **Program Review** Changes
- **White Knight** teach-out changes
- **Incentive compensation** focus



VI. Oversight Changes *continued*

Program Reviews

- FSA must give **program review report** & relevant **materials** to school for review and response prior to final report.
- Final FSA report must include **school's response** and **FSA** statement explaining its **position** on school's response
- Program review conclusions and information must be kept **confidential** until FPRD issued

HEOA § 497

VI. Oversight Changes *continued*

Teach-outs: 'White Knights'

- Teach-out provider can establish T4 eligible location **w/o prior T4 liabilities or CDRs**, if:
 - i) Teach-out **approved** by **target's accreditor**
 - ii) School T4 terminated by **LST or EA**
 - iii) If payments for closed school assets, FSA can obtain payments for unpaid T4 liabilities
- Items (ii) & (iii) in new regs, not **HEOA § 496**
- **Pre-qualify with FSA region team.**

VI. Oversight Changes *continued*

Incentive Compensation

- Feb 2010 Comptroller General study on incentive compensation enforcement, including ‘safe harbors’
- ED 5/26/09 announced neg reg to include “incentive compensation paid to persons or entities engaged in student recruiting or admissions activities” Denver Hrng 6/15/09
- Recent qui tam FCA cases on incentive comp
- **Review your compensation plans – both criteria and application of criteria**

VII. Practical Aspects of Implementation

FROM THE CEO'S PERSPECTIVE

- Compliance as a **core value**
- **The “wake up” call**
- **Self Assessment**
- **Desk Top Procedures**



VII. Practical Aspects *continued*

- **Training, Training, Training!!!**
- **Monitoring and Controls**
- **Internal Audits**
- **Timely Reporting**



HEOA CHANGES – STAYING ALIVE

QUESTIONS???

THANK YOU FOR COMING

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