

2010 FAME Conference
Orlando Renaissance Sea World Resort

**“A Sea of Change” – Charting a
Course to Successfully Navigate
the Straits and Narrows of Title IV**

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HEOA and Negotiated Rulemaking

- PL 110-315, 8-14-08, <http://thomas.loc.gov>
- 3 Final Reg packages, **74 FR 55625 , 55413 & 55902** (10-27, 10-28 & 10-29, 2009)
- Integrity NegReg: Sessions ended January



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Our Agenda Today

- I. Three Year Default Rates - Appeals**
- II. Accreditation – New Key Requirements**
- III. Title IV Oversight & Eligibility Measures**
- IV. Federal & Private Loan Requirements**
- V. Consumer Disclosures**
- VI. Negotiated Rulemaking – Integrity Issues**
- VII. Change in Ownership Issues**

I. Three Year Default Rates

- A. Rate phase-in & appeals
- B. **Rate accuracy appeals**
- C. Draft 2008 Rate Challenges
- D. **Low income appeals**
- E. Literacy training focus



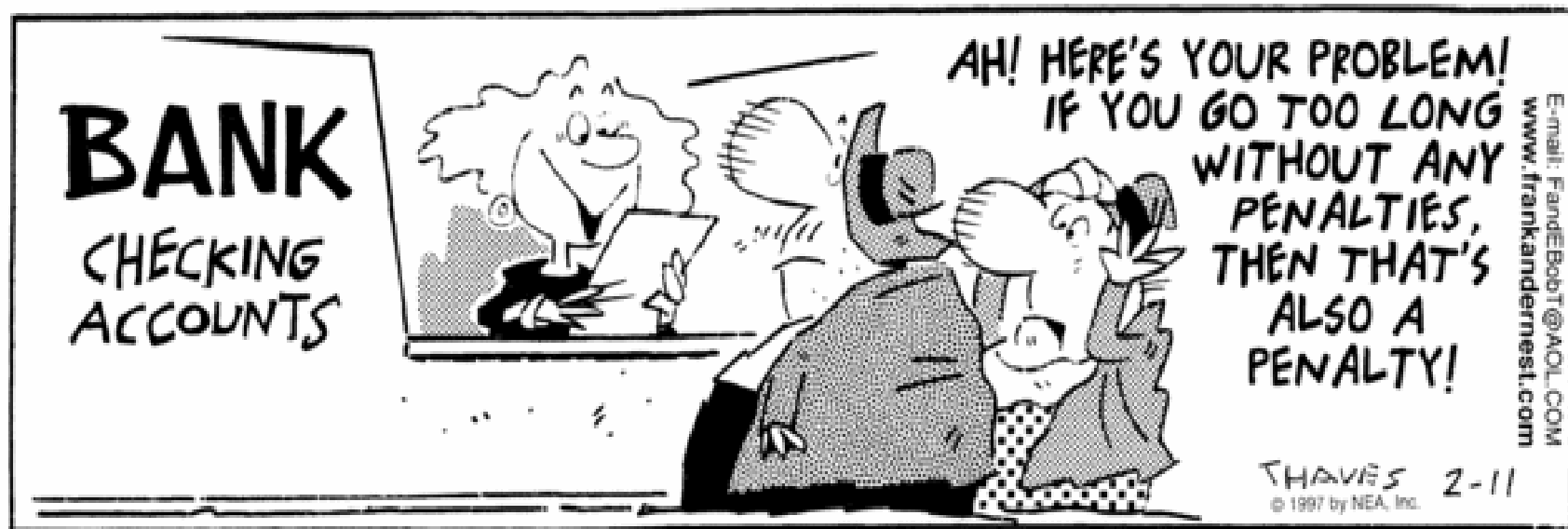


A. Rate Phase-In & Appeals

1. Starts with 2009 CDR: **10/1/08 to 9/30/09**
2. **No 3 Yr rates for FY 2007 & FY 2008**
3. **FY 2009 to FY 2011: Two Sets of Rates - 2 Year CDR Rates & 3 Year CDR Rates**
4. **Two Sets of Rate Appeals for 2009 -2011 rates: 2 Yr CDR appeals & 3 Yr CDR appeals**
5. ***Appeals of Right*: draft rate & loan servicing**
6. **Sanction Based**: erroneous data, low income

Phase-In & Appeals *continued*

7. Until 9/14, sanctions based only on 2 Yr CDRs
8. In 9/14, sanction ceiling for 3 consecutive rates goes from 25% to 30% - loss of all T4 aid 2 Yrs
9. Single yr high CDR ceiling stays 40% (lose loans), but first 40% 3 YR CDR counted is 2011 CDR

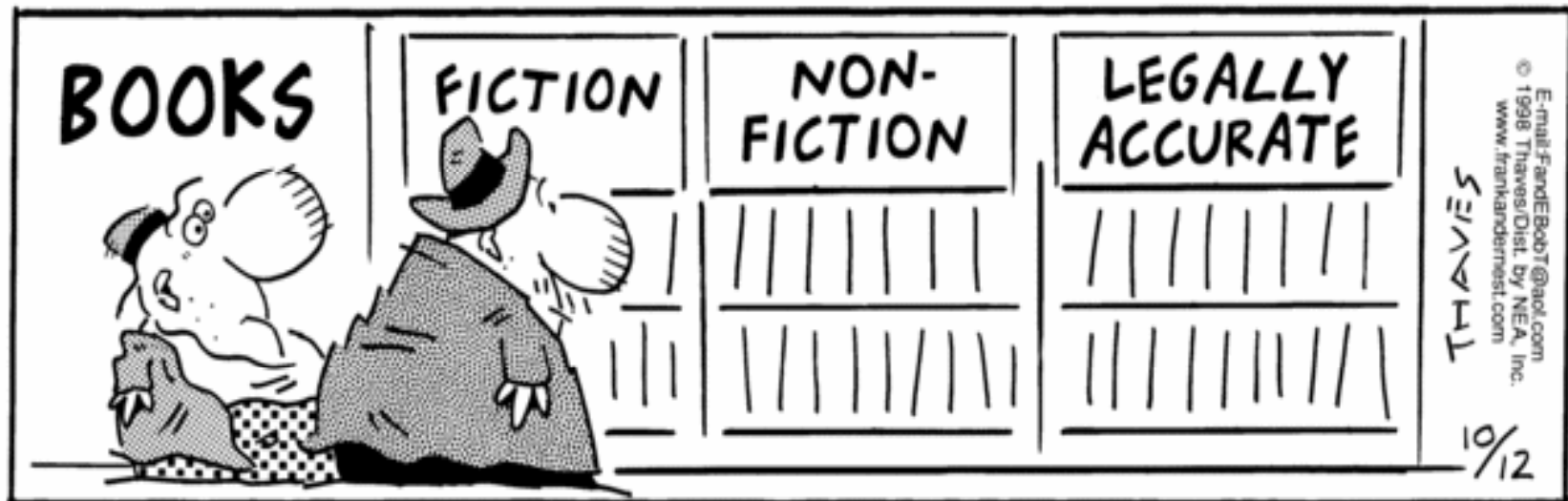


CDR Appeal Management Issues Today

2008 CDR 2 YR Rate Draft Rate Challenge	<i>Draft Rate</i> <i>Feb 8, 2010</i> <i>Official Rate</i> <i>Sept 2010</i>
2009 CDR 2 Yr & 3 YR Rate Check Cohort Now	2nd Yr of Rate: 10/1/09 to 9-30-10
2010 CDR 2 Yr & 3 YR Rate Follow Cohort	Cohort Period (Yr 1): October 1, 2009 to September 30, 2010

B. Rate Accuracy Appeals

1. Draft Rate Challenge – 45 days, LRDR errors
2. Official Rate – Uncorrected Data & New Data Adj
3. Loan Servicing Error Appeals (all rates)
4. Erroneous Data Appeals (sanction rates only)
5. 15 days for Req: clock – 6th bus. day from notice



C. Draft Challenges

A. Draft FY 2008 CDR Issued **2/8/10**

B. **Rate Accuracy Challenge**: must be sent to data mgrs by **4-5-10**, 45 days from notice clock: **2/17/10**

*Describe error and include supporting documents

C. Premise: status or cohort errors

D. E-CDR Appeals: option now, **req 2/11**, Release 3.0

E. Failure to challenge draft LRDR for incorrect or missing data means you are stuck with errors

* Second-bite appeals – 2 Yr Rate and 3 Yr Rate?

* Maybe only 3rd Yr Status issues on 3 Yr Rate appeal, **34 CFR 668.208 (b)(2)**

D. Low Income Appeals

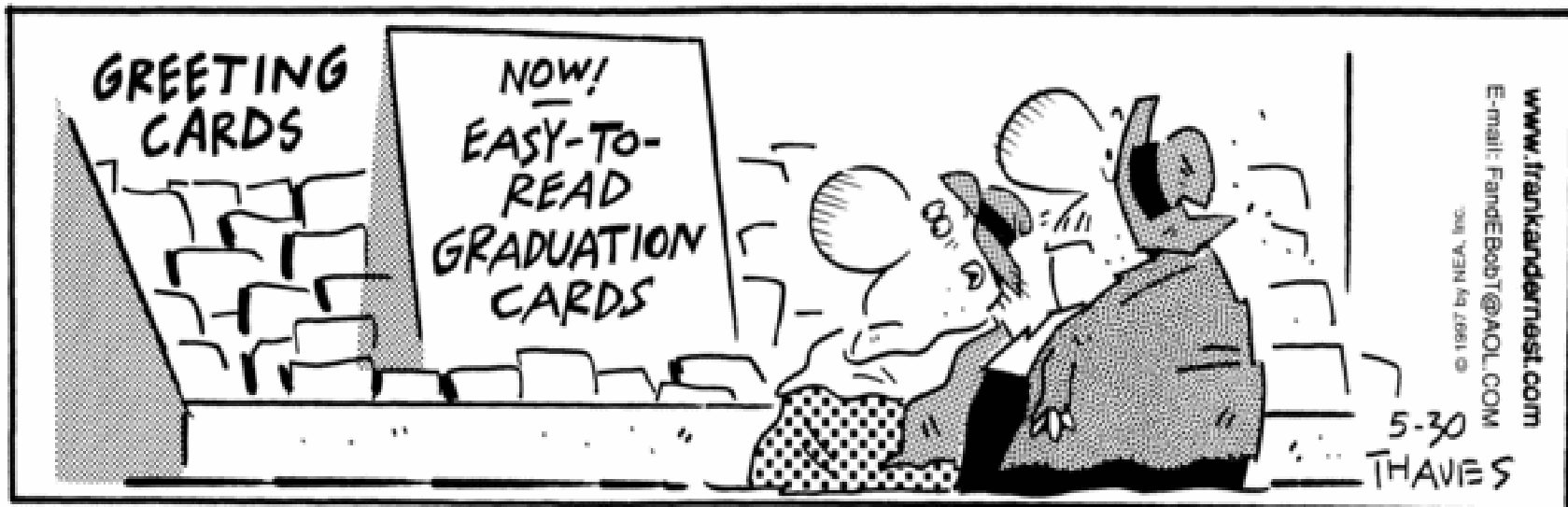
“Economically disadvantaged” schools

1. Available if **2 consecutive 30%+ 3 YR rates**
2. **2/3 Low Income & 44% Placement or 70% Grad.**
3. **Low income: ½ max Pell or below HHS poverty**
4. File appeal w/i **30 days** of clock trigger, file **auditor’s opinion** w/i **60 days**
5. Successful appeal: **exempt** from exclusion **1 year** w/o provisional certification
6. Need **3rd party documentation** of employment

E. Literacy Training Focus

Financial literacy programs & materials to be developed by GAs and ED, Ag. & Treas. Depts. to identify best literacy programs **HEOA §435, 1042**

*Ask GA and/or Region Team for program



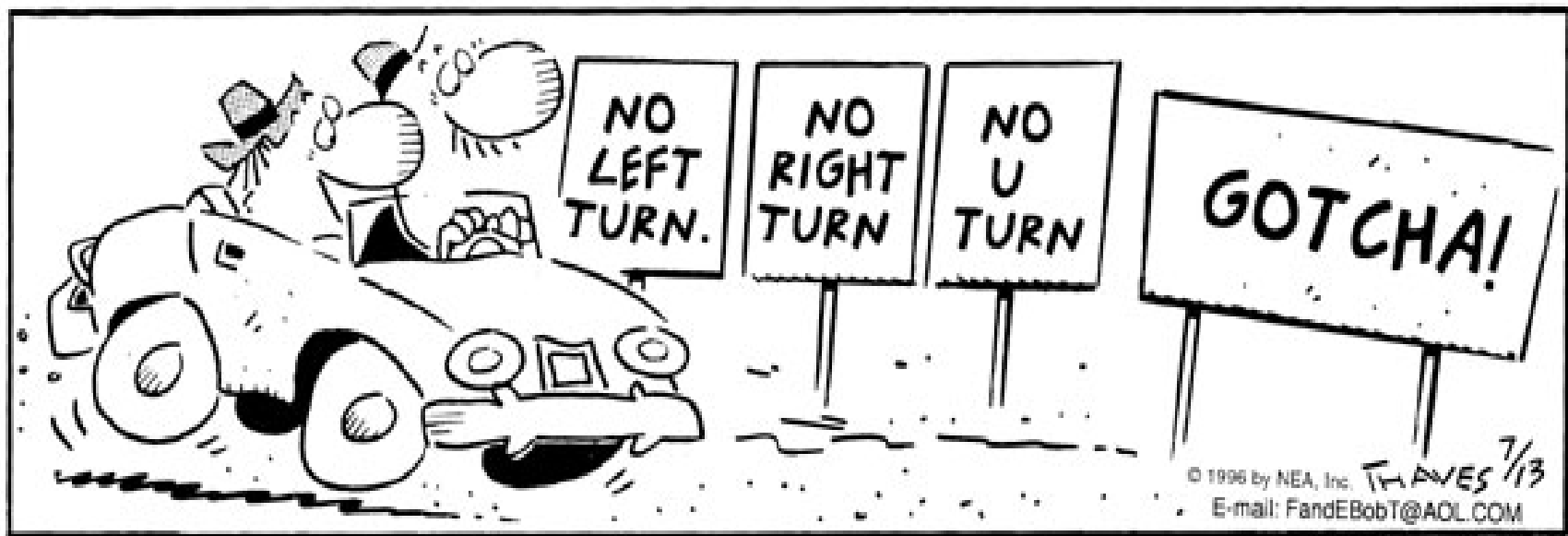


E. Literacy Training Focus *continued*

- **Urge lower T4 loans** & some monthly cash payments, with later tax credit up to \$2500 from **ARRA Stimulus Bill** – \$13.8 Billion total – for homes with up to \$160K income
(Pres. Obama proposal for 4 yr extension)
- **34 CFR 682.603 (f)(3)** allows case by case discretion on loan certification – encouragement for lower loan amount is permissible

II. Accrediting – New Rules

- A. Distance Education – definition, integrity
- B. Transfer of credit
- C. Growth monitoring
- D. Due process – appeals



Accrediting - New Rules *continued*

A. Distance Education (DE)

- **Basic Definition:**

Instruction to students separated from instructor, synchronously or asynchronously, through **regular & substantive** interaction

- **Technologies can include:**

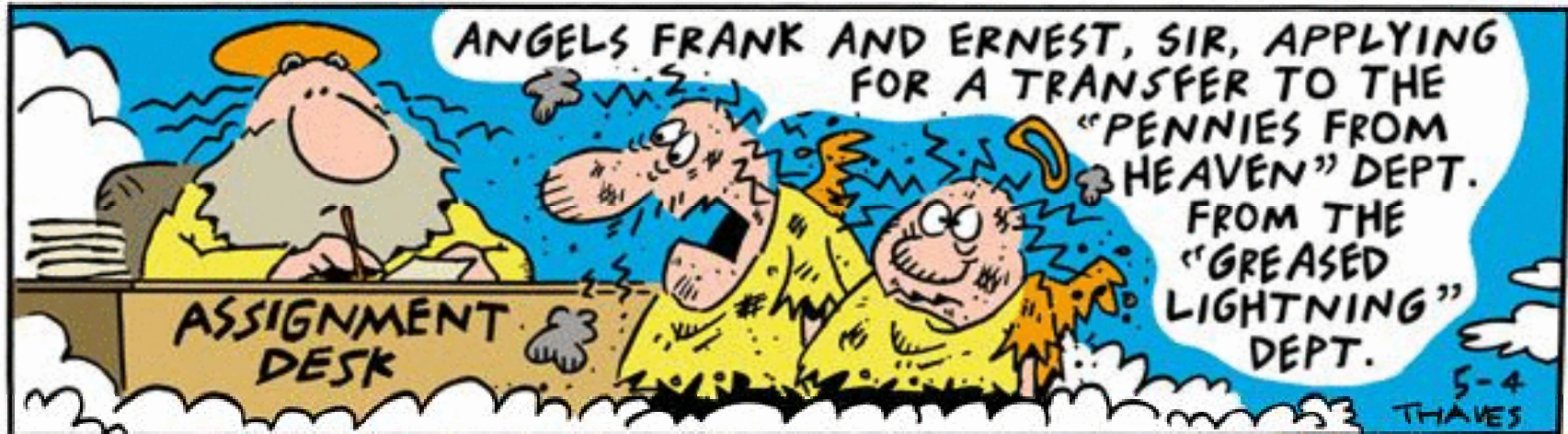
Internet, Open Broadcast, Closed Circuit, Cable Microwave, Broadband and Fiber Optics, Satellite, Wireless, Audio Conferencing, Video Cassettes, DVDs, CD Roms

Accrediting Rules - Distance *continued*

1. **Accrediting Standards** must effectively address quality of institution's DE
 - Agency **not** required to have **separate DE standards, policies & procedures**
2. Institutions must verify student identity and protect **student privacy**
 - Options include: Secure Login, Proctored Exams, New Technologies (e.g., biometric)
 - “Electronic footprint”: record of **regular and substantive** interaction instructor to student

Accrediting – New Rules *continued*

- B. Transfer Of Credit (TOC): accreditors must confirm institution has TOC policies which:
- i) are **publicly disclosed**, ii) with **statement of criteria** regarding when credits earned at another school will be accepted



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Accrediting – New Rules *continued*

C. Monitoring Significant Growth

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

Accrediting – New Rules *continued*

D. Due Process & Appeals

1. Agency Contacts with USDOE about schools must be kept **confidential** at USDOE request
2. **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



Accrediting – New Rules *continued*

3. 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. Title IV Oversight & Eligibility Measures

- A. Program Reviews
- B. **White Knight Teach-outs**
- C. Notifications on Changes
- D. **HCM₂ Funding**





III. Oversight & Eligibility *continued*

A. Program Reviews:

1. FSA must give program review report/relevant materials prior to issuance of final report.
2. **Final FSA report must have:**
 - 1) copy of school's response
 - 2) statement addressing school's response and explaining FSA position
3. **Program review conclusions & information must be kept confidential until FPRD, HEOA § 497**
4. **Entrance/exit interviews:** cooperation tone, areas of concern, sufficiency of documents/information



III. Oversight & Eligibility *continued*

5. **Program Reviews – increasing:** “desk” and on-site; selection factors/concerns:

*Student eligibility fraud: diplomas, GEDs, ATBs

*Incentive compensation

*Surging enrollments – year over year T4\$ growth

*High CDRs – spikes

*Significant recurring audit findings: refunds, etc.

*High drop rate – other state/accrediting concerns

6. **New Program Review Guide:**

<http://www.ifap.ed.gov/programrevguide/2009ProgramReviewGuide.html>

III. Oversight & Eligibility *continued*

B. 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
- *Pre-qualify with FSA region team.*



III. Oversight & Eligibility *continued*

C. Notifications of Changes

1. E App Update/Approval Events: (34 CFR 600.21): w/i 10 days of any of the following:

- new locations
- new non-degree programs/new higher level programs,
- new CEO or FAO or third party servicer
- new 25% of higher shareholder
- change in ownership

*Report by **E App update** and **letter to Region Team**
with copies of state and accrediting approvals

*Keep file copies of notification emails and letters

III. Oversight & Eligibility *continued*

2. New Programs or Changes:

- Institutional accreditor must approve new programs
- Offer only at branch? Unclear – check Reg. Team

*Change content/program length: is it

Still substantially same? Unsure – check Region

3. Location Changes:

- ‘Satellite’ location for one course or exams
- Adding another building at existing campus: different street address?
- Shifting main campus designation
- Relocating a campus more than 10 miles

III. Oversight & Eligibility *continued*

D. HCM₂ Cash Funding – easy to get on/hard to get off

1. Reasons/causes:

- *Program reviews: on-site conclusions re serious issues
- *Reports/actions by state/accrediting bodies
- *Failure to give change notices (locations, accrediting)
- *Possible 90-10 failure (very high score 89._)
- *Very low composite scores (< 0.5)

2. 30 day batch submissions: 45 days/longer turnaround

2. Escape from HCM₂?

- *Conclusive removal of underlying trigger
- *3 or more successive 'clean' submissions

IV. Federal & Private Loan Requirements

- A. Preferred Lender Lists
- B. Code of Conduct
- C. Prohibited Activities
- D. Private Lenders & Loans



IV. Federal & Private Loans

A. Preferred Lender Lists

1. New PPA provision: both T₄ and private loans
2. Must be reviewed annually
3. Report to ED annually (no due date yet)
4. Not required to have preferred lender list
5. No preference if you simply identify all lenders
6. For private lenders, disclosures must comply with TILA (Truth in Lending Act)
7. ED to provide model disclosure form (2/2010)



Preferred Lender Lists *continued*

8. **Preferred Lender List** must include:
 - i) 3 unaffiliated T4 lenders
 - *2 unaffiliated private lenders
 - ii) **Selection criteria**: borrower benefits
 - iii) **Right to use other lenders** - clear notice
 - iv) **Identification** of **affiliated lenders**
 - v) Comparison of **terms**
 - vii) **Published** on web and other publications



B. Lender Relationship Code of Conduct

1. **All institutions** in FFEL or Direct loan programs must have Code of Conduct posted on web site
*If you have any special arrangements with any private lenders, your Code should cover such relationships
2. Code must **ban conflicts** of interest and **prohibited activities** and **transactions**
3. **Train** Financial Aid Staff **annually**
4. **States** may have lender laws imposing additional restrictions (e.g., NY), which should be added to your Code



C. Prohibited Conflicts & Activities

- 1) Revenue sharing/opportunity pools
- 2) Gifts other than *de minimis* cost marketing items
- 3) Consulting or contracting arrangements
- 4) “Auto” packaging first time loans
- 5) Requiring specific lenders/refusing to certify with other lenders
- 6) Staffing assistance, except emergency
- 7) Advisory board compensation, except reasonable travel costs and DOE report
- 8) No linkage to opportunity pool private loans or preferred lender status

Prohibited Conflicts & Activities *continued*

Conflicts – Allowed Exceptions:

- 1) Standard materials, workshops and training on loans, default prevention, literacy
 - 2) Student Entrance and Exit counseling
 - Not promoting lender products/services
 - School must supervise
 - 3) Philanthropic contributions not tied to loan volume
- ** Reports: Annually to DOE (states?) on any benefits from lenders

D. Private Lenders & Loans

1. Private Education Loans Subject to TILA

Disclosures: includes any third party loans and loans made by school to student for “postsecondary education expenses,”

EXCEPT:

- a) **Credit extension** for **90 days or less** (advance on T4 or other funds) – can charge interest with written disclosure
- b) **Tuition billing plans**: i) without any interest rate & ii) with a term of one year or less

Private Loans & Lenders *continued*

2. TILA Reg Z (12 CFR Part 226) – Major Disclosures:

- a) **Interest rate:** range (credit scoring), fixed or variable, limits on rate, effect of co-signer
- b) **Fees:** origination, late payments, default
- c) **Repayment terms:** loan period – extension or prepayment; deferment options; accrual of interest, compounding; bankruptcy – may not discharge loan
- d) **Total cost estimate:** full-term, highest rate
- e) **Title IV:** possible federal grants & loans on more favorable terms – source for information

Private Loans & Lenders *continued*

- f) **Self-certification form**: required from borrower with COA and EFA
- g) **Borrower rights**: loan will be available for 30 days after approval & 3 business days to cancel

Model Forms: 74 Fed Reg. 41194, 41237-41248

(August 14, 2009)

3. **School Involvement with Private Lender**: If private lender information/forms provided to students by school, it:

- a) Must provide notice re possible T4 aid

Private Lenders & Loans *continued*

b) should assure lender provides complete and correct TILA Reg Z disclosures, as school may have responsibility

c) Prevent any school promotion of lender

d) Make sure school code covers relationship

4. [Self-Certification Form](#) (DCL GEN 10-01, 2/14/10), with information completed, must be provided by institution upon request of student

- COA – EFA = Need

- Student Signature (written or electronic)

***Purpose: assure real need/avoid unnecessary debt**



“My Uncle Sam & Me” - A Rap on Rules

- **MY UNCLE SAM – HE PAYS THE BILLS**
- **SO ALL OUR KIDS CAN LEARN THEIR SKILLS**
- **MY UNCLE SAM – HE WRITES THE RULES**
- **ON WHEN AND HOW HE PAYS THE SCHOOLS**



“My Uncle Sam & Me” *continued*

- **MY UNCLE SAM – HAS RULES THAT CHANGE**
- **AND SOMETIMES WHAT HE WRITES SEEMS STRANGE**
- **BUT UNCLE SAM – HE KNOWS WHAT’S BEST (I GUESS)**
- **FOR RULES THAT HELP OUR KIDS PASS TESTS**



“My Uncle Sam & Me” *continued*

- SO, I’VE SHOWED UP, TO SIT AND HEAR
- WHAT **UNCLE SAM** HAS CHANGED THIS YEAR
- I KNOW I’VE GOT TO GET IT RIGHT
- SO, **UNCLE SAM** AND ME STAY TIGHT!

V. Consumer Disclosures

- A. College Price Lists
- B. Net Price Calculator
- C. Consumer Disclosure Policies



Consumer Disclosures *continued*

A. College Price Lists – Transparency”

1. Schools provide data DOE uses to annually publish
 - Tuition for 9 categories of institutions
 - As of July 2011, ED to publish lists of:
 - i) 5% highest tuition or net costs institutions
 - ii) 5 % largest 3 YR tuition increase institutions
 - iii) 10% lowest tuition or net costs institutions
2. 5% highest schools: must give report explaining increases and steps to control & reduce costs



Consumer Disclosures *continued*

B. Net Price Calculator

1. Schools must have “net price calculator” on website by 10-29-11, allowing students/parents to see average program price net of average financial aid
2. Can use DOE template posted 10-29-09:
<http://npc.inovas.net/institution/>
3. If school develops its own calculator must include same data elements in DOE template
4. **Purpose:** allow students “to determine an estimate of a current or prospective student’s individual net price at a particular institution.” [HEOA § 132 \(h\)\(1\)](#)



Consumer Disclosures *continued*

C. New Consumer Disclosures:

1. **Textbooks:** by July 1, 2010, for each course, each text, schools must make web & paper disclosure of:
 - a) textbook ISBN number, publisher and price;
 - b) last 3 copyright dates and any content revisions;
 - c) cost of text to public at other nearby outlets;
 - d) whether text available in other formats

* **Goal – lower overall book costs to students**

* **Schools urged to establish textbook rental programs and to identify buyback sources & digital content delivery programs.**



Consumer Disclosures *continued*

2. **Credit Transfer**: publicly disclose **criteria** for review of **incoming** credits & list all **articulation agreements** with other institutions, HEOA 495 (2)(c), 34 CFR 602.24 (d)
3. **P2P/Copyright Infringement Policy**:
 - Must prohibit access to illegal P2P websites
 - Detect/prevent unauthorized distribution of copyrighted material on school IT systems
 - Offer known legal alternatives to illegal downloading or P2P distribution copyrights



Consumer Disclosures *continued*

4. **Student Outcomes** (web or paper disclosure):
 - i) types of employment obtained by graduates;
 - ii) graduate/professional programs attended;
 - iii) placement rate, if calculated by school; and
 - iv) retention rates of certificate & first-time full-time degree seeking undergraduates
5. **Student Body Diversity**: disclose breakdown of graduates by Pell recipients, gender & ethnicity
6. **Institutional Improvement Plans**: whenever plans developed to change/improve a program, must disclose to students

Consumer Disclosures *continued*

7. Additional Policies and Reporting:

- **Campus Crime:** policies encouraging reporting of all crimes, reports to victim of crime on outcome of investigation & annual report
- **Drug Violations:** notice on loss of T4 aid and steps to regain eligibility
- **Drug & Alcohol Abuse Prevention Programs**
- **Voter Registration Forms** – deliver electronically
- **Fire Safety measures** (if residential campus)
- **Missing Persons** (residential campus)



VI. Integrity NegReg: Expected Rules

- 14 Topics – sessions ended late January 2010
- 9 topics - consensus: HS Diplomas, ATB tests, Verification, Credit Hrs, Satisfactory Academic Progress, Retaking Courses, Misrepresentation, Disbursements, Agreements between Schools
- 5 topics - no consensus: Incentive Compensation, Gainful Occupation, State Authorization, R2T4 Attendance, R2T4 Modules
- NPRM expected by summer 2010, final regulations by November, effective July 1, 2011

A. Incentive Compensation

- **GAO Report 2/10: 32 schools violated rule from 1998 -2009**
- Recent 'qui tam' FCA cases on incentive compensation: **UOP \$78.5 Million settlement**
- Rapid online growth
- DOE claims steady stream of complaints about aggressive recruiting practices



A. Incentive Compensation *continued*

1. DOE wary of school use of safe harbors:

- Wage adjustments *not solely* based on covered activity: 'other factors' not truly considered
- Grad bonuses: per DOE, fosters short programs, lower standards & SAP, altered attendance
- Mgmt Bonus: drives culture & enrollment pressure
- Student \$100 Referral Bonus: students may act with “little reflection” for “immediate reward
- Internet Activities: rapid technological advances & higher use “cause for concern

A. Incentive Compensation *continued*

2. **DOE Position**: Eliminate all existing safe harbors & add new 1st safe harbor:

Two wage adjustments every 12 months for covered personnel, NOT based on per student enrollment success, but permissible to consider overall institutional goals

*Dispute: “Overall Institutional Goals”

*Total enrollment, total completions??

* DOE – NO, traditional sector compromised

* For profits remained opposed



A. Incentive Compensation *continued*

3. **Effect of Elimination of Safe Harbors:** greater risk of program review findings and penalties for compensation arrangements considering enrollment & fin aid success
 4. **Effective Date: if safe harbors eliminated,** change to current PPA regulation (34 CFR 668.14 (b)(22)): not effective until July, 2011
 5. **Review Existing Comp Plans: **plan criteria and application of criteria**** - assess compliance with existing safe harbors
- * [This will be a key program review issue](#)



B. Gainful Employment in Occupation

1. **Term in statute long time** – applies to ALL programs of for-profit schools & certificate programs of others
2. Defined in past by reference to DOL Dictionary of Occupational Titles **34 CFR 668.8**
3. **DOE Proposal**: program prepares for “gainful employment” if **8%/or less debt to earnings ratio**
*Annual payments on median student debt (federal and private), 10-yr amortization, not more than 8% of annual BLS reported earnings in 25th percentile for occupation (or documented actual earnings)

Gainful Employment *continued*

4. Use **three fiscal year period** for calculating average debt load and earnings
5. **Alternative measures**: (i) 75% loan repayment w/o deferments/forbearances; or (ii) 70% completion and 70% placement
6. Failure to meet ratio, loss of program eligibility next yr
7. **New programs** – must get unaffiliated community employers' affirmation curriculum meets skills required for occupations & report annually to DOE on debt to earnings ratio

***Lawsuits likely: beyond DOE authority, price-fixing**



C. State Authorization – Institution

1. **Existing DOE Approach:** If state has no active licensing agency, accrediting body action accepted
2. **DOE Concerns:** CA debacle & some states use of regional accreditation as proxy for oversight
3. **DOE Proposal:** institution must be licensed or authorized by state law or state agency or by Federal government, and state authorization must be subject to revocation for cause (including violation of consumer protection laws)

*CA voluntary agreements would work

*No grandfathering allowed

D. Attendance Taking Schools – R2T4

1. Current Law (34 CFR 668.22 (b)):

A) R2T4 – date of withdrawal (**DOW**) is last date of attendance (**LDA**) for schools ‘**required**’ by outside entity to take attendance.



D. Attendance Taking Schools *continued*

B) Schools **not required** but electing to keep attendance records can ignore records, use payment period **midpoint** if no notice from student

2. **DOE Concern: Potential abuse of Title IV funds**

- ‘Non attendance’ school students may attend few days, leave w/o notice, school uses midpoint as DOW in calculating T4\$\$ return *even if attendance records exist showing earlier drop, unfairly benefiting student/school*
- More **equitable** to require use of any attendance records created by school



D. Attendance Taking Schools *continued*

3. **DOE Proposal:** Attendance records must be used to determine DOW *if*:

- i) Attendance required by **outside entity**; OR
 - ii) **School requires instructors** to take attendance; OR
 - iii) Student compliance with **program requirement** of school or **outside entity** necessitates attendance (e.g., externship)
- * But 1-day census requirement does not mean school/program is attendance based

E. Modular Programs – R2T4

1. **Current Rule** (DCL GEN-00-24): if student in modular program completes first module in a term but does not enroll in scheduled 2nd and 3rd modules, is not considered withdrawn & no R2T4 required

2. **DOE Concern**: Current policy equates taking 1 course in compressed module time period to 1 course taken over entire term

***Potential abuse** – schedule short initial module (1 credit hr, 3 wks) in order to keep T4 when student drops after completing 1st module

E. Modular Programs – R2T4

3. DOE Proposal:

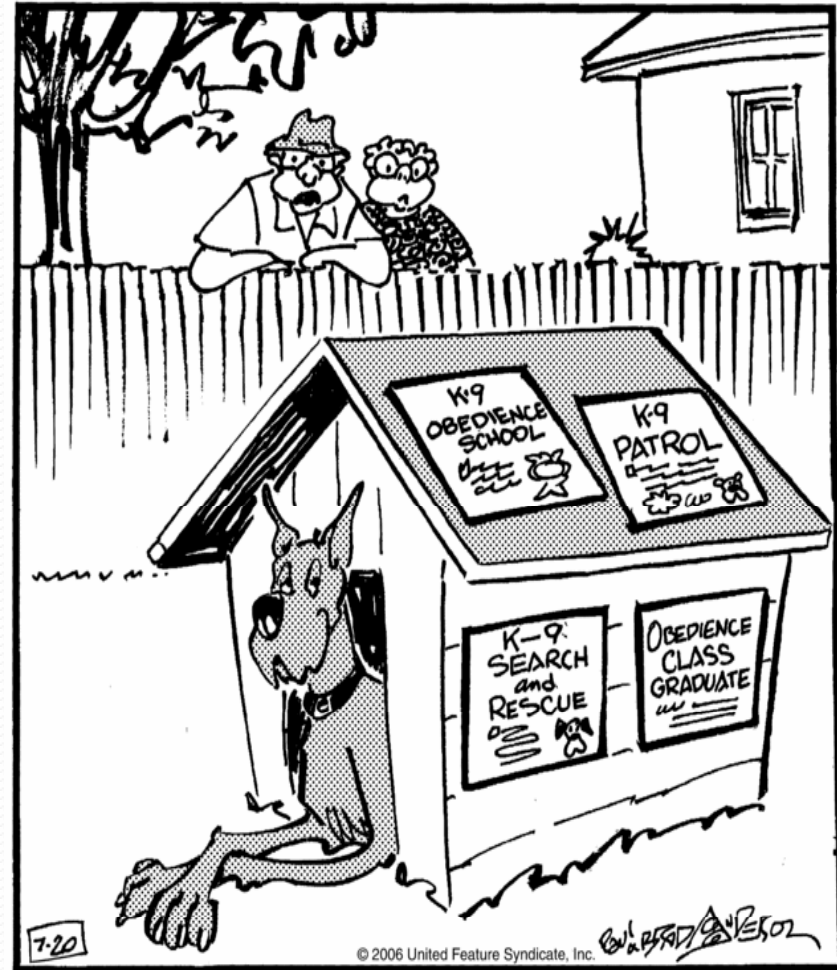
Student in any kind of credit hour program (including modular) is “withdrawn” if he stops attending prior to completing all days of payment period of period of enrollment for which he was **scheduled**

***Example:** student finishing 1st 5 wk 3 cr hr module in 15 wk payment period, but failing to attend 2nd and 3rd modules scheduled for payment period, is deemed withdrawn at end of 1st module

F. High School Diplomas

1. **Impetus:**

- Public High School drops/exam failures
- Increasing online private high schools
- More 'diploma mills'?
- Aggressive recruiting at some colleges
- Lack of uniform state standards



"I think he got them on the Internet."

F. High School Diplomas *continued*

2. **Current Law:** FAFSA student certification of H.S. /GED enough, unless docs required by school, or accrediting grounds for concern about validity - then check state authorities
3. **Problems:**
 - Lack of state oversight of private HS
 - Lack of DOE standards or lists of identified diploma mills (Aug 09 GAO report)
 - Relationships between owners of private H.S. and colleges

F. High School Diplomas *continued*

3. DOE Proposal:

- i) FAFSA 2011-12 will require HS identity – if no name provided or no match with DOE list, student's file may be selected for verification
- ii) DOE to provide guidance on standards for evaluating HS diplomas in FSA Handbook or other announcements
- iii) School must develop/use procedures for evaluating a H.S. diploma when either school or DOE has reason to question whether school or credential is valid

F. High School Diplomas *continued*

4. Some Reasons to Not Accept H.S. Diploma:

- i) Given for fee “little to no academic component”
- ii) Diploma time/place inconsistent with other info
- iii) School on reliable list (compiled by outside source) of questionable secondary schools

5. Some Outside Source Lists:

<http://www.docufide.com/index.jsp>

http://www.ehow.com/how_5003179_verify-high-school-diploma.html

<http://www.nces.ed.gov/surveys/pss/privateschoolsearch/>

<http://www.nces.ed.gov/ccd/schoolsearch/>

G. ATB Tests

1. **Concern:** GAO 8-09 Report says current regs do not require timely **analyses** by ATB test publishers of **test scores** and identification or irregularities nor timely reporting to DOE on **proctor violations** and proctor decertification action
2. **Additional Area:** guidance is needed on the HEOA's provision allowing satisfactory completion of **6 credit hrs** to qualify a student for Title IV aid
3. **DOE Proposal:**
 - A) **6 Credit Hours:** 225 clock hours or 6 semester, trimester or quarter hours



G. ATB Tests *continued*

- B) ATB test “administrators” (proctors): cannot be current or former employee, shareholder, officer, director or student of school, nor have any controlling interest in any school
- C) ATB test publishers: must report to DOE on their processes for certification of administrators, review and analysis of test scores, de-certification of administrators & special content/process changes for individuals with disabilities
- D) Test score analysis: every 18 months publisher must analyze test scores, immediately report to Secretary if credible evidence test compromised & report to OIG if credible evidence of fraud



G. ATB Tests *continued*

- E) **De-Certification:** 3 year period for failure (was “repeated”) to follow publisher instructions, not keeping security, compromising integrity
- F) **De-Certification Notice:** to administrator, Secretary, schools involved, students involved
- G) **Result of De-Certification:** Secretary to give prompt notice to student whether test results rendered invalid
- H) **School records:** student, test date/score, administrator name & any disability test arrangements
- I) **Liability:** not independently administered test by certified administrator who kept tests at secure place & reported to publisher in 2 days or was compromised

H. Inter-School Agreements

1. **Current Law:**
 - A) Can outsource to **ineligible** entity by **contract** up to 25% and up to 50% if accrediting approval & no common ownership
 - B) Can outsource to **eligible institution**, by **consortium** agreement, up to 100%

34 CFR 668.5

WORKING DAZE

JOHN ZAKOUR
KYLE MILLER





H. Inter-School Agreements *continued*

2. **DOE Concerns:**

- A) Outsourcing schools should provide **minimal portion** of program if awarding credential.
- B) May need **accrediting review** of majority outsourcing agreements to ensure academic standards and quality of other school reasonably similar
- C) May need different **limitations** if **common ownership** of both organizations

H. Inter-School Agreements *continued*

4. DOE Proposal:

- A. *Contracts between 2 or more commonly owned eligible institutions - not more than 25%*
- C. Contracts between **2 or more eligible institutions** w/o common ownership - up to **100%**
- D. Contracts between eligible institution and ineligible entity - up to 25%, or, w/o common ownership and accrediting approval, up to 50%
- E. Give prospective/existing students written information about arrangements & other school



I. Satisfactory Academic Progress (SAP)

1. **Current Law:** schools must have acceptable written SAP policy and student must make SAP

*SAP policy is acceptable if it contains both **qualitative** and **quantitative** standards (150% max)

*Discretion on increments for monitoring

2. **DOE Proposal:**

a) **SAP policy must require:**

i) Evaluation end of each payment period if program 1 yr or less, once each yr for longer programs

ii) Specify minimal grade/assessment level



I. Satisfactory Academic Progress *continued*

- iii) Assure pace leads to completion in 150% of normal
- iv) Student must have C average at end of 2nd year in program lasting more than 2 years;
- v) Defines impact on GPA of failed/incomplete course and re-taken courses & acceptance of transfer credits
- b) **Financial Aid Warning:** failed SAP at end of payment period/year – draw T4 for another period
- c) **Fin Aid Probation:** failed SAP, appealed & T4 aid restored on conditions to be met in next period



J. Retaking Coursework

- A. **Issue:** possible need for uniform standards, for credit and clock hour programs on when courses can re-taken for transfer and re-admitted students
- B. **DOE Proposal:** Modify definition of the workload of a full-time student – to include, for a term based program, “repeating any coursework previously taken in the program” 34 CFR 668.2

K. Verification

- A. **IRS**: ED to provide IRS link for importing tax info
*If student did not file & not required to file tax return, must obtain W-2 to document wages
- B. **30% Limit** is removed
- D. **Relieves duty to verify** FAFSA info when no reason to doubt it and i) applicant died, ii) is only being awarded unsub aid, or iii) is transfer student using FAFSA from prior school which sends letter confirming it verified info
- E. If verification **changes FAFSA info** but **not amount** of award, can make interim disb. but if corrected SAR or ISIR not recvd by deadline, reimburse prog. acct.



L. Disbursements

- A. **Concern:** some delays in disbursing T4 grant and loan funds – \$\$ not given to students for books and other educational costs
- B. **DOE Proposal:**
 - i) If student projected to have credit balance during payment period, by 7th day of period school must pay student credit balance or amount equal to book & supply charges in COA, unless other arrangements (vouchers)
 - ii) School not liable to return \$\$ if student doesn't begin attendance, but must give immediate notice to lenders



M. Credit Hour Definition

- A. **Status Quo**: DOE has not defined “credit hour” and has deferred to accrediting bodies
- B. **Issue**: OIG concern that regional accrediting bodies not supervising how institutions measure program length and student achievement
- C. **DOE Proposal**: “Carnegie” unit: 1 hr direct faculty instruction and 2 hrs out-of-school work for 15 wks for semester, **OR** comparable academic work, e.g., in lab work or internships
- D. **Accrediting Bodies**: must assure school has appropriate policies for determining credit hours



N. Misrepresentation

- A. **Concern:** current regs do not provide sufficient protection to students
- B. **DOE Proposal:** to add specific prohibitions to misrep. regs similar to those in FTC School Guide (2 yr & less schools), 16 CFR 245, see notice at <http://www.ftc.gov/os/fedreg/2009/july/090730privat-evocationalschool.pdf>
- C. **DOE Reg Changes:**
 - i) applies misrep prohibition to **all institutions** for all advertising/marketing communications for sale of programs or courses



N. Misrepresentation *continued*

- ii) Applies to communications with students or agencies
- iii) Appears to remove “substantial” qualifier
- iv) **Specific areas emphasized:**
 - Acceptance of incoming credits
 - Reasons for terminating student or not awarding credential (externship, proficiency exam)
 - Lack of state authority to confer degree/certificate
 - Financial aid & duty to repay loans whether or not program completed or job obtained
 - Current employment conditions
 - Licensure & exam requirements

VII. Changes in Ownership

- A. **Change in Control (CIC)**: any new 50% owner or any existing 50% owner releasing some equity
- B. **CIC Requires DOE approval or T4 is lost!!**
- C. **Change in Form**: from one corp to another corp or partnership - might be viewed as CIC or not





Changes in Ownership *continued*

- D. **Business Exclusion**: requires Region team confirmation, where same equity parties own school, but form of business organization changes
- E. **Estate Planning**: owner retirement and transfer to family member or another shareholder with 2 years or more involvement as manager
- F. **Letter of Credit (LOC)**: any buyer company w/o 2 years of financial audits usually (i) must post a LOC equal to 25% of T4 disbursements at school in prior fiscal year, and (ii) faces moratorium on growth until first T4 & F/S audits filed and approved

A Sea of Change: Charting Your Course

THANK YOU FOR COMING

Best wishes for a compliant 2010

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