

National Association of Student  
Financial Aid Administrators

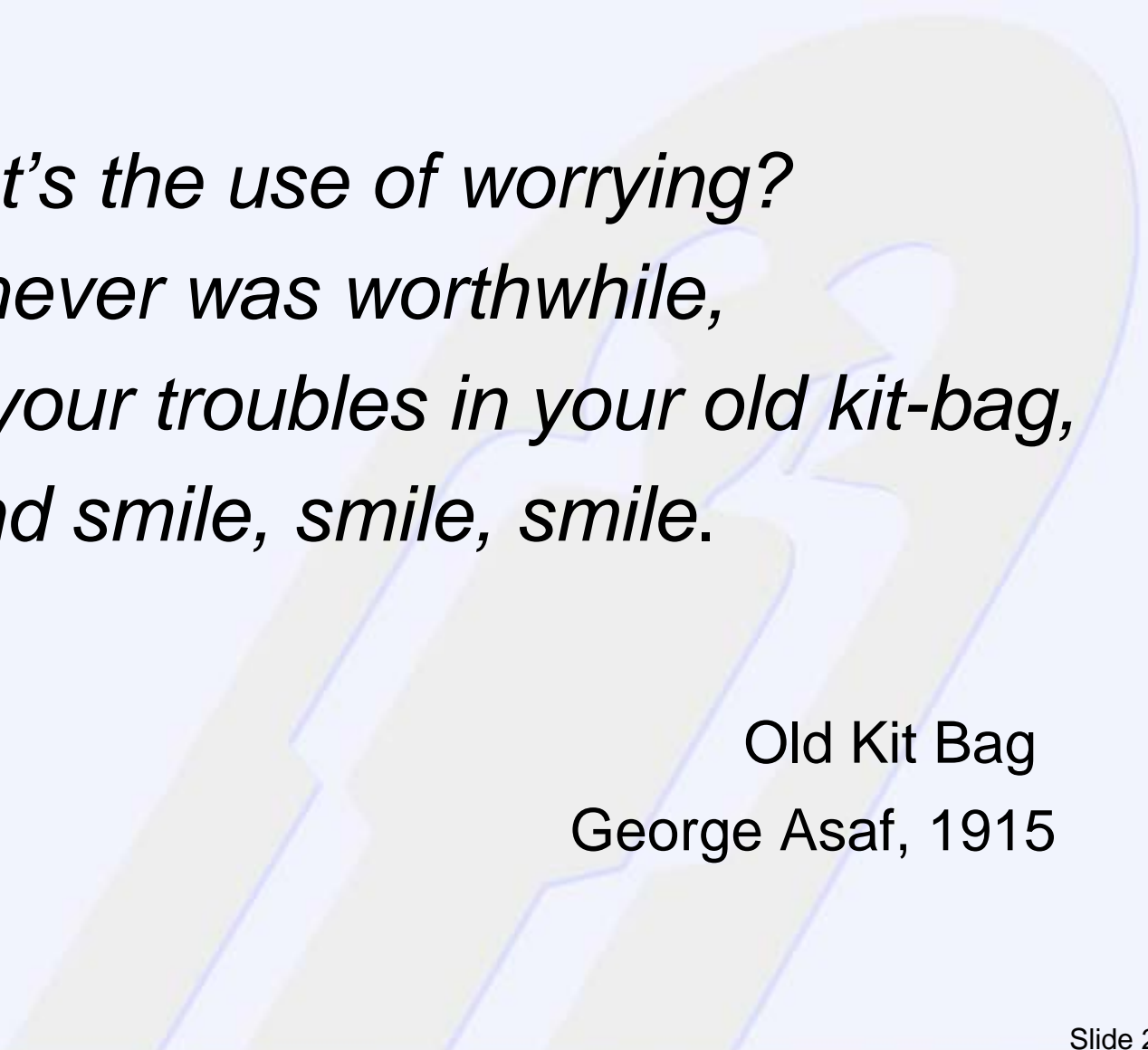
# Title IV Regulatory Exposure Outside of the Financial Aid Office

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NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS



*What's the use of worrying?  
It never was worthwhile,  
So, pack up your troubles in your old kit-bag,  
And smile, smile, smile.*

Old Kit Bag  
George Asaf, 1915

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# Title IV Program Environment

- Approximately \$90 billion of federal funds.
- Complex statutory and regulatory regime:
  - Difficult to maintain 100% compliance (even without fraud or abuse);
  - Involves multiple components of an institution; and
  - Varying degrees of attention and understanding from non-financial aid professionals.

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# 2008 Top Program Review Findings

- Verification Violations ✓
- Crime Awareness Requirements Not Met
- Return to Title IV Calculation Errors ✓
- Entrance/Exit Counseling Deficiencies ✓
- SAP Policy Not Adequately Developed/Monitored
- Return of Title IV Funds Made Late ✓
- Student Credit Balance Deficiencies ✓
- Information in Student Files Missing or Inconsistent
- Pell Over/Under Payments ✓
- Consumer Information Requirements Not Met
- Improper/Undocumented Dependency Overrides
- Lack of Administrative Capability

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# Compliance with Non-Title IV Laws

- Program Participation Agreement requires compliance with all statutory and regulatory provisions of the Title IV programs, and:
  - Title VI of the Civil Rights Act of 1964;
  - Title IX of the Education Amendments of 1972;
  - Family Educational Rights and Privacy Act of 1974;
  - Section 504 of the Rehabilitation Act of 1973;
  - Age Discrimination Act of 1975;
  - Drug-Free Workplace Act of 1988; and
  - 31 USC § 1352 et seq. (lobbying restrictions).

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# Hypothetical #1

- College provides internet service to students via computer labs, residence halls and wi-fi “hot spots” around campus. The student handbook includes an internet usage policy, including that “copyright infringement is illegal.” Students nonetheless engage in illegal file sharing via the college’s network.

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# Higher Education Opportunity Act

(Reauthorized Title IV and amended HEA; §§ 485(a)(1)(P), 487(a)(29))

- Title IV institutions must certify in the PPA that they have developed plans to “effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents.”
- Institutions must also "to the extent practicable" provide alternatives to illegal downloading or peer-to-peer sharing of copyrighted material.
  - Merely telling students that “copyright infringement is illegal” is insufficient, and unlikely to educate the relevant population.
  - Explore additional safeguards (e.g., specific terms of use, software tools to warn or block uploading).
- Annual disclosure about federal penalties, internal disciplinary policies

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# Hypothetical #2

- University decides to start a Bachelor's of Fine Arts (BFA) program and acquires additional studio space for the program in a building about one mile from the edge of campus. After a year, the BFA faculty like the newer space so much, they convince the Dean of Arts and Sciences to schedule all core courses at the newer space.

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# Additional Locations

(34 CFR § 668.20(c)(1) and 668.21(d))

- Any location at which 50% or more of a program will be offered must be reported to ED.
- Must wait for ED approval before disbursing Title IV funds to students at the new location if:
  - Institution is provisionally certified;
  - Institution on cash monitoring or reimbursement;
  - Institution acquired assets of another Title IV institution that provided programs at the same site;
  - Institution subject to loss of eligibility under 34 CFR § 668.188 (evasion of cohort default rate consequences) if site is added; or
  - ED has previously informed institution that approval will be required.
- OIG Audit Report of Touro College (10/30/08).

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# Hypothetical #3

- University's School of Education offers BA's, MA's and Ph.D. degrees. It decides that to keep up with the ever increasing demands on teachers and education professionals, it will offer an online MA in Education Administration that current teachers and administrators can take at night and on weekends. The School of Education's accrediting body requires that changes in the method of program delivery be approved as a substantive change before implementation. The School does not seek such approval. After a year of operation, accrediting body discovers the existence of the new program and issues a letter ordering School to Show Cause why its accreditation should not be revoked.

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# Eligible Institution

(34 CFR § 600.4(a)(5) and 600.5(a)(6))

- To be eligible to participate in Title IV, an institution must be accredited by an accrediting agency recognized by the Secretary to accredit institutions for Title IV purposes.
  - Distance education must be within the scope of accreditation granted by ED.
  - Institution must be approved by the accrediting agency for distance education.
- Institutional vs. programmatic accreditation.

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# Accreditation Proceedings

- Show Cause is not usually an adverse action, nor a final action. (34 CFR § 602.25(b))
- Show Cause can, however, lead directly to a revocation proceeding.
- In a case of programmatic accreditation, it would likely not affect ability to disburse Title IV, but might affect ability of students to take state licensing examinations.
  - Could lead to ED finding that school misrepresented the nature of the program.

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# Hypothetical #4

- College offers solely Bachelor's degree programs, with particular strength in communications. For years, the communications department has wanted to offer a Master's degree program, and finally convinces the institution to offer M.A. program on a "pilot" basis. The University obtains state and accrediting agency approval for the "pilot" program and begins enrolling master's level students.

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# Increased Level of Offering

(34 CFR § 600.20(c)(2))

- Must apply **and** wait for ED approval before disbursing Title IV funds to students enrolled in any increased “level of program offering.”
- Not just from non-degree to degree programs, but also from bachelor’s to master’s programs.
  - Title IV funds disbursed before ED approval may constitute a liability.
  - No exception for “pilot” programs.

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# Hypothetical #5

- An institution's College of Health offers both Associate's and Bachelor's degrees in nursing. With the recent surge in healthcare career opportunities, and because it already offers many of the requisite courses, the college decides to also offer a "lower level" non-degree Home Health Aide diploma option. It obtains requisite state approval and its accrediting body does not expressly approve non-degree programs.

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# New Non-Degree Programs

(34 CFR § 600.10(c))

- Institutions must apply **and** wait to have any new additional program designated by ED as an eligible program unless the program:
  - Is at a previously-approved degree level; or
  - Prepares students for gainful employment in the same or related recognized occupation as an educational program that has previously been designated as an eligible program at that institution, and is at least 8 semester hours, 12 quarter hours, or 600 clock hours.
- Incorrect determination by institution results in liability for all Title IV funds received or awarded to students in the program.

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# Hypothetical #6

- Institution negotiates contract with Universidad de Barcelona to offer study abroad programming to its undergraduates. Institution agrees to provide a specified number of students each semester to the program. Universidad will oversee the content of the curriculum, supervise exams, and issue grades and transcripts. Can students use Title IV funds to pay for their semester at Universidad?

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# Written Agreements for Study Abroad

(34 CFR § 668.5(b))

- Title IV may be offered for study abroad if:
  - Foreign institution has not had Title IV eligibility terminated or involuntarily withdrawn because of termination proceeding by accrediting agency or local authorizing entity.
  - Educational program otherwise satisfies definition of eligible program at 34 CFR § 668.8.
  - Foreign institution provides no more than 25% of educational program.
  - Foreign institution provides no more than 50% of program, is not owned or controlled by same entity as domestic institution and the domestic institution's accrediting agency has approved the relationship.

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# Factors if Contracting with Ineligible Institution (34 CFR § 668.5(d))

- Same termination, percentage of program (25/50) and accreditor approval limits from prior slide are applicable.
- Overall program must satisfy eligible program requirements.
- Control over program must remain with home institution:
  - Determine student's eligibility for Title IV;
  - Calculate and disburse Title IV;
  - Consider all of a student's enrolled hours that apply to degree/certificate at both institutions to determine status and cost of attendance; and
  - Maintain students' Title IV records.

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# Hypothetical #7

- College hires a new Director of Admissions who, in order to ingratiate himself with his staff, buys them all bottles of wine for the holidays. He also holds a contest where the names of admissions personnel that review a specified number of files during a 10-week period are put into a drawing for (1) a \$100 gift card, or (2) a new Apple i-Phone.

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# Incentive Compensation

(34 CFR § 668.14(b)(22)(i))

- Institution will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admissions activities or in making decisions regarding the awarding of Title IV funds...
  - What about the “safe harbor” exception for “the awarding of token gifts to the institution’s students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the cost of the gift is not more than \$100” ... Would this apply to the hypothetical?

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# Hypothetical #8

- A four-year University and a two-year College enter into a transfer of credit agreement. Three years later, the College falls on hard times and the University provides a loan. Six months later, in consideration for revised loan terms, the University and College enter into a management agreement with a right to acquire. One year later University offers to acquire College, but it is not certain it wants to continue offering all of the same programs.

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# Change of Control

(34 CFR § 600.31)

- **Definition of Control:**
  - The possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- **Change of Control for closely-held corporations:**
  - Person or entity acquires more than 50% of total outstanding voting stock;
  - Person or entity with ownership interest acquires control of more than 50% of outstanding voting stock; or
  - Person or entity who holds 50% or more of stock ceases to hold or control that portion of stock.
- **Change of Control for publicly traded corporations:**
  - Person or entity acquires ownership and control such that SEC Form 8K must be filed; or
  - Person or entity that holds or controls at least 25% of voting stock and more shares of voting stock than anyone else ceases to do so.
- **Change of Control for other corporations:**
  - Person or entity acquires both control of 25% of total outstanding voting stock and control of the corporation or ceases to hold 25% and control of corporation; or
  - In a membership corporation, a person or entity who is or becomes a member acquires or loses control of 25% of the voting interests and control of the corporation.

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# Change of Control

(34 CFR §§ 600.31(b) and 600.20(g))

- *Other changes of control, including changes of control for non-profit institutions:*
  - Sale of the institution;
  - Transfer of controlling interest of stock;
  - Merger of two or more institutions;
  - Division of one institution into two;
  - Transfer of liabilities of institution to its parent;
  - Transfer of assets comprising substantial portion of educational business of the institution; or
  - Change in status as a for-profit, nonprofit or public institution.

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# Change of Control

(34 CFR § 600.31)

- Institution ceases to be eligible for Title IV as of a change in ownership that results in a change of control.
  - Subject to ED application process whereby eligibility is extended on a month-to-month basis while ED reviews the change.
- Under the hypothetical, did ownership/control change upon the occurrence of ...
  - Transfer of Credit Agreement?
  - Loan Agreement?
  - Management Agreement?
- What about the Programs?

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# Hypothetical #9

- A physical assault on a non-student occurs outside the front door of a private home that sits across the street from campus. A faculty member who lives next door witnesses the incident and calls campus police, who respond. The campus police prepare a report that is copied to local law enforcement, and the incident is not included in the institution's daily crime log or its annual crime report.

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# Clery Act

(20 USC § 1092(f))

- A daily crime log is required to include, by date reported, *all crimes reported to the campus police or security department.* (34 CFR § 668.46(f)(1))
- Required statistics for annual report include crimes on all *public property*, including thoroughfares, streets, sidewalks, and parking facilities, that are within the campus, or *immediately adjacent to and accessible from the campus.* (34 CFR § 668.46(c)(4))
- Clery Act compliance is required for Title IV eligibility, and increasingly has been the subject of ED program reviews.

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# Essential Internal Controls

- Educate institutional components about the impact of various actions on Title IV participation.
- Designate and open lines of communication.
- Create specific processes for internal review and approval; include notification to financial aid office.
- Financial aid office a partner in decision-making.

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