

Keeping the Feds Happy: A Higher Education Attorney Workshop on Key Compliance Strategies for California Colleges

Presented at the

**CAPPS 32ND ANNUAL
CONFERENCE**

**OCTOBER 7, 2016
PASADENA, CA**

Presented by

STANLEY A. FREEMAN, POWERS PYLES SUTTER & VERVILLE PC

MICHAEL S. ABRIL, SAN JOAQUIN VALLEY COLLEGE, INC.

RONALD L. HOLT, DOUTHIT FRETTS ROUSE GENTILE & RHODES, LLC

Presenters

Stanley A. Freeman, Principal



**Michael S. Abril, Vice President of
Legal and Regulatory Affairs**



Ronald L. Holt, Partner



Stan Freeman

- 1. Washington Update**
 - 2. Compliance Update: Recent War Stories, and Lessons Learned**
-

Washington Update

Borrower Defense to Repayment NPRM - Big Risks For Colleges:

- **Low Bar For Qualified Discharge Claims**
- **Group Claims: At ED's Discretion!**
- **Cottage Industry of "Debt Counselors" Has Already Emerged - Borrowers Besieged**
- **Saddling of Schools with Liabilities, But Little or No Due Process**
- **"Piling On" -- New Letter of Credit Triggers**

Final Rule: Pub. by 11/1 – Effective 7/1/17

Washington Update

Legislative Outlook:

- **90/10 Revisions Gaining Steam**
- **Accreditation Reform and Accountability**
- **Bipartisan Higher Ed Accountability Bill Introduced in Senate**
- **“Skin in the Game” Concepts Endure**

Key Election Question: Will Control of Senate Shift from R to D?

Recent War Stories: Lessons Learned

Recent War Stories: Misrepresentations

- **Placement Rate Assessments**
 - **Private Verifiers Vs. Governmental Assessments**
 - **Use by ED of Private Verifiers**
- **Placement Calculation Problem Areas**
 - **Related vs. Unrelated to Occupational Objective?**
 - **Waivers and Exclusions**
 - **Counting Already Employed Students and “Job-Outs” as Placed**
 - **Related Party Employers/Agencies**
 - **Substantiation of Claims**

Recent War Stories: Lessons Learned

Recent War Stories: Financial Responsibility

- **ED Focuses on Financials, Reserves, and Cash Flow in Wake of Massive School Closures**
- **Review of Liquidity Not Just Composite Scores**
- **Letter of Credit Percentages – Old Assumptions No Longer Apply**
- **Institutional Readiness to Meet ED Conditions Is Key**
- **New Factors: LOC Triggers Under Pending Defense-to-Repayment Rules**

Recent War Stories: Lessons Learned

Recent War Stories: Flawed Admissions Practices

- **High School Diploma – Questioned Practices:**
 - **Is the High School Program Substantial and Academically Sound, and is the School Itself Authorized and Otherwise Legitimate?**
 - **Is the High School Diploma Valid, Accepted by Postsecondary Institutions, and Recognized by Regulators and Employers?**
 - **Is the High School Independent of Your School?**
 - **Referral Relationships – Be Wary!**

Recent War Stories: Lessons Learned

Recent War Stories: Private Lending Practices

- **Institutional/Private Lending Concerns:**
 - **School/Lender Relationship**
 - **Loan Terms –**
 - **Are Interest Rates and Origination Fees Fair or “Predatory”?**
 - **Over-borrowing?**
 - **Whose Responsibility?**
 - **“Rollovers” Among Loan Programs**
 - **Default Rates and Bad Debt**

**Michael
Abril**

**Major 2016
California
Legislation
Affecting
Private
Postsecondary
Schools**

SB 1192—Bureau Reauthorization Bill

Signed by Governor Brown on September 24, 2016

- **Creates Office of Student Assistance**
- **Requires out of state institutions to register and pay fees (No SARA yet)**
- **Provides limited legal fee recovery**
- **Extends BPPE Sunset from 1/1/17 to 1/1/21**
- **Establishes Office of Student Assistance and Relief (but no monitor)**
- **Substantially modifies annual fee structure**

SB 1192 Revised Fee Structure

SJVC BPPE FEES COMPARISON			
Old Fee Structure	.0075 of revenue \$25,000 Max	New Fee Structure	.0045 of revenue \$60,000 Max
Main	\$ 25,000.00	Main	\$ 60,000.00
	\$1,000 Flat Fee		.0045 of revenue \$60,000 Max
Branch 1	\$ 1,000.00	Branch 1	*
Branch 2	\$ 1,000.00	Branch 2	*
Branch 3	\$ 1,000.00	Branch 3	*
Branch 4	\$ 1,000.00	Branch 4	*
Branch 5	\$ 1,000.00	Branch 5	*
Branch 6	\$ 1,000.00	Branch 6	*
Branch 7	\$ 1,000.00	Branch 7	*
Branch 8	\$ 1,000.00	Branch 8	*
Branch 9	\$ 1,000.00	Branch 9	*
Branch 10	\$ 1,000.00	Branch 10	*
Branch 11	\$ 1,000.00	Branch 11	*
Branch 12	\$ 1,000.00	Branch 12	*
Branch 13	\$ 1,000.00	Branch 13	*
Total Annual Fees	\$ 38,000.00		\$ 381,111.00

AB 2251-Student Loan Servicers

- The Student Loan Servicing Act, which was signed by Governor Brown on September 29, 2016 and becomes operative on July 1, 2018, provides for the licensure, regulation, and oversight of student loan servicers.
- Purports to be a direct response to “student debt crisis” and CFPB 9/15 report citing challenges faced by students to obtain answer

AB 2251 Definitions

- Section 28104(j)-Definition of “Servicing”
- Section 28104(k)(1) Defines “Student Loan”
- Section 28104(k)2)(A) and (B)-Defines what is not a “Student Loan”

Section 28104(k)(2)(B)--

- (B) A “student loan” shall not include an extension of credit made by a postsecondary educational institution to a borrower if one of the following apply:
- The term of the extension of credit is no longer than the borrower’s education program.
- The remaining, unpaid principal balance of the extension of credit is less than \$1,500 at the time of the borrower’s graduation or completion of the program.
- The borrower fails to graduate or successfully complete his or her education program and has a balance due at the time of his or her disenrollment from the postsecondary institution.

See also Section 28106(c)

(c) A private postsecondary educational institution not exempted from the requirements of this division pursuant to subdivision (b) shall not be required to comply with this division for the servicing of a student loan it extended to a borrower that a licensee is servicing pursuant to a servicing agreement with the private postsecondary educational institution for that student loan.

Ron Holt

**Best Practices
Succession, CDRs,
Teachouts &, Past
Performance, GE,
Eligibility and
Attendance,
Incentive Comp**

Succession & Other Changes

Changing the Guard & Other Changes

- **Ownership structure: no proprietorships**
- **Legal entities, e.g., from LLC to corp: reporting and possible approval**
- **Estate Planning – transfer reporting**
 - **Do not die intestate - w/o will or trust!**
- **Death of key executive/owner: who has control – board?**
 - **Stability issue: possible HCM2**

Succession & Other Changes

Succession – Changing the Guard & Other Changes

- **Death reporting – 50% owners**
 - **10 days to update E App, report to state/accreditor (or emails)**
 - **No waiting till probate order/trustee action on formal equity transfers**
 - **Presumption of estate having control**
 - **Failure to timely report: HCM2, cut off T4 eligibility, pay back T4, fines**

Succession & Other Changes

- **Servicers/board/key exec changes**
- **Program changes: CIP, credential, clock/credit hours, length**
- **New programs – GE certification**
- **Management agreements with purchase options/expansion**
- **Expanded/new locations: 50% rule**
 - **Key: ask Region team**
 - **Guess wrong – pay back T4/integrity**

Cohort Default Rate - Management

- **FY 2013 CDR declines for 3rd yr: 11.3%**
- **15% all FPs, 16.9% <2yrs; risk metric**
- **Active CDR management plan: ALL**
 - **Borrower counseling/contact info**
 - **Tracking repayment/delinquency causes**
- **Appeal clock starts 10-4-16, eCDR**
- **Servicing appeals: 15 + 30 days**
- **New/Uncorrected Data: 15+30 days**
- **Mitigating appeals: 30 + 30 CPA**

Teach-Outs & Past Performance

- **Individual transfers or group teach-out**
- **Regulator approvals for teach-out: terms similar to closed school contract**
- **Teach-out at closed campus: temporary ECAR update, permanent AL w/o 'white knight' status incurs T4 liabilities**
- **Hiring closed school 'control' person for your 'control' job: possible T4 liabilities.**
- **Leasing closed school space: same result w/o DOE approval**

Student Eligibility / Attendance

- **High School Diplomas**
 - **Written policy on review**
 - **Red flags – online, out-state, dates**
 - **Vetting: State ED, HW website, DOE**
- **Beware relationships with online HS**
- **Attendance: keep source documents**
- **Class Schedules: follow or amend**
- **Makeup: document academic activity**
- **Beware CPP – document agency ties**

Incentive Compensation

- **Student centered mission/culture**
- **Periodic memos re no success comp**
- **Any annual adjustments based only on standard skills – teamwork, product knowledge, communication, etc.**
- **Counseling for fit of student**
- **Process focus – student surveys**
- **Institutional plans – loyalty based**

Gainful Employment

GE Appeals & Forward Management

- **GE rollout calendar – current/future**
- **D/E Appeals: Debt for Completer**
- **Official Rates – Consequences/Appeals**
- **GE Management – Debt/Earnings**

Gainful Employment

Current GE Rollout Calendar

9-8-16: Completer lists to SSA

10-1-16: Reporting on AYE 6-30-16

October: Webinars on reading/appealing rates

<http://fsaregistration.ed.gov/d/0vqlbh>

October: Draft D/E rates

December: 45 day appeals due (debt)

Jan 17: Expanded GE disclosures

Feb 17: Official AY 15 GE rates

April: 60 day earnings appeals/CPA

May-June: Appeal decisions – final rates

GE – Future Schedule

Oct 1: GE reporting for last completed AY

Dec 15: **GE completer lists for next AY GE rate**

Jan 31: Completer challenges (45 days)

Jan 31: GE disclosure updates (warnings)

April 1: **Draft D/E Rates (debt)**

May 16: day challenge due (45 days)

July 1: **Final GE rates (earnings)**

July 15: earnings appeal notices (14 days)

Aug 31: earnings appeals (60 days)

GE – Draft D/E Rate Appeals

- Draft D/E rates for each program, with earnings and median debt, along with debt used for each student in each GE program
- **45 days** to submit a challenge (case) in **DCAS** (Data Challenge and Appeals Solution) or **NSLDS** loan debt information used for each program.
- Need evidence to overcome presumption that loan data information used is correct.

GE – Draft D/E Rate Appeals

- **Challenges for cohort (2yr-4yr) debt and transitional year debt (AY 15 debt)**
 - **Cost information (tuition, fees, books, supplies, etc.)**
 - **Institutional or private loan debt (as previously reported to NSLDS)**
 - **Title IV debt and net adjustments**
 - **Calculation of median**
- **Official documents (ledger card, billing statements, NSLDS reports on T4 loans)**

GE – Draft D/E Rate Appeals

- Submitted GE data to compare to draft rate data: **Cohort & Transitional year**
 - Grad debt tables
 - Each program grad's total debt/charges
 - Copies of supporting school documents
 - Amortization calculation
- Run NSLDS reports for Title IV debt for grads to compare

GE – Earnings Appeals

Official D/E rates **Jan-Feb 2017** (EA #74 on 5/6/2016)

- **Notice** of intent of earnings appeal: due to DOE within **14 days** of release of official rates
- Appeal, with D/E rates, certifications, earnings information from survey or state, CPA attestation, other specified **supporting documentation** due within **60 days** after official D/E rates
- Earnings appeals for: (i) programs with failing rates, if outcome is zone or passing, or (ii) zone rates, if outcome is passing

GE – Earnings Appeals

- **Failing AY 15 rate: over 12.0% regular earnings and over 30% discretionary**
- **Within 30 days of release of rate, without an earnings appeal, must begin giving warnings – on website and directly (by email or written notice) to program students and prospects**
- **Warnings: program failed GE, students may not be able to repay loans, may want to look at other options**

GE – Earnings Appeals

○ Earnings Appeal Options

- State-sponsored data system
- Institutional survey, standards established by NCES and/or use of DOE survey software
- For either need at least **50% of cohort grads**
- DOE has not yet identified any states with data system meeting the requirements
- Privacy issues may preclude access to cohort data

GE – Earnings Appeals

- Review best practices guide to prepare to meet 8 survey standard requirements:

<http://www.ifap.ed.gov/GainfulEmploymentInfo/attachments/BestPracticesGuide.pdf>

- RGEES platform: collection and data editing, performing required bias analysis, etc.

https://www.ifap.ed.gov/ifap/WrapperServlet?link=Redirect_RGEESPlatform

- Start survey early – more time for multiple efforts to contact graduates to get to 50% response rate

GE – Earnings Appeals

- **Follow survey standards or appeal rejected**
- **RGEES survey questions must be used, in prescribed sequence, regardless of survey method**
- **Consider use of gift cards to increase survey participation** (approved by Guide)
- **Collect grad contact info, periodically update**
- **Promote RGEES survey and importance of earnings info with grads & existing students**

GE – Earnings Appeals

- **Follow survey standards or appeal rejected**
- Preamble: purpose, confidentiality, data aggregation**
- 1. Name Verification**
 - 2. Earnings from employment during GE rate calendar year (CY 2014 for AY 15)**
 - 3. Self-employment earnings, net of expenses**
 - 4. Earnings from PT, extra jobs, free-lancing**

GE – Any Rescue?

- **Congress**: proposed budget amendments to withhold GE spending – stuck with current administration
- **Existing Litigation**: CECU petition to Supreme Court – long shot
- **GE Applied Litigation**: suits by schools claiming GE regulation as applied to them is arbitrary and capricious
- **Survey grads in AY 15 GE cohort and AY 16 GE cohort on choices/jobs in earnings years**

GE – Prospective Changes

- **Institutional changes: NFP, no T4 loans**
- **Debt – Program changes**
- **Debt – Counseling/COA Budgets**
- **Debt – Other FA: VA, WIA, scholarships**
- **Earnings – career focus admissions req.**
- **Earnings – W2 wage jobs**
- **Earnings – employer W2 rptg of tips**

Stanley A. Freeman



Stanley A. Freeman is President of Powers Pyles Sutter & Verville, Chair of the Executive Committee, and founder of the firm's education practice. Mr. Freeman frequently counsels postsecondary educational institutions from all sectors of higher education regarding strategic issues pertaining to participation in the federal student financial assistance programs, accreditation, licensure, and related regulatory concerns.

Mr. Freeman has been actively involved in representing educational institutions for twenty years. In his practice, he counsels individual educational institutions, corporate investors in higher education, associations of schools and colleges, accrediting agencies, and allied educational companies on administrative, transactional, regulatory and litigation matters. He has represented numerous schools in proceedings before the US Department of Education, the accrediting commissions, and guaranty agencies. He has also litigated cases in the state and federal courts. He spends much of his time advising clients concerning regulatory and compliance matters arising under the Higher Education Act of 1965.

POWERS
POWERS PYLES SUTTER & VERVILLE PC
ATTORNEYS AT LAW

1501 M Street, NW, 7th Floor, Washington, DC 20005

Phone: 202-872-6757 Fax: 202-785-1756

E-mail: Stan.Freeman@ppsv.com www.ppsv.com

Michael S. Abril



Michael S. Abril is the Vice President of Legal and Regulatory Affairs for San Joaquin Valley College (SJVC), a regionally accredited (Accrediting Commission for Community and Junior Colleges) career college with fourteen campuses located throughout California and an online division. SJVC, which was founded in 1977 in Visalia, CA offers a number of degree and certificate programs in allied health, business, and technical fields. Mr. Abril serves on SJVC's senior management. He oversees SJVC's institutional and programmatic accreditation in addition to his primary duties as SJVC's Chief Legal Officer and Corporate Secretary. He maintains offices in both Visalia and Bakersfield.

Prior to joining SJVC in December 2012, Mr. Abril worked twenty six (26) years in private practice, including seven years practicing in Los Angeles for national law firms. As a private attorney, Mr. Abril focused on business and real estate matters. Mr. Abril did his undergraduate work at the University of California, Davis where he received his B.A. (Economics and Political Science) in 1982. He received his MBA and J.D. degrees from the University of Southern California in 1986.

Finally, Mr. Abril resides in Bakersfield, CA, is married to Alice, and has three children—daughters Paige and Taber and son Blair.



3828 W. Caldwell Avenue, Visalia, CA 93277

Phone: (559) 734-9000 Fax: (559) 746-0324

E-mail: Mike.Abril@sjvc.edu www.sjvc.edu

Ronald L. Holt



Douthit Frets Rouse Gentile & Rhodes, LLC
1100 Walnut Street, Suite 2900, Kansas City, MO 64106
Bus Tel: 816-292-7604 Fax: 816-292-7601
Cell: 816-509-5194
E-mail: rholt@dfrglaw.com www.dfrglaw.com

Ron leads DFRG's higher education practice and also handles litigation.

Over the past 23 years, Ron has represented institutions across the nation on program reviews, administrative proceedings, student claims, state and federal court litigation, changes of ownership, and accrediting and state licensing agency disputes.

Ron is a past member of the Federal Affairs Committee of the Association of Private Sector Career Colleges & Universities (APSCU) and a past member and past chair of the Litigation Committee of CCA, APSCU's predecessor.

DFRG has offices in Kansas City, MO and Leawood, KS.

Other lawyers in DFRG's higher education group are: Dr. David Harpool, Megan Banks, and Kristen Clevenger.