CAPPS 33RD ANNUAL CONFERENCE
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LESSONS AND BEST PRACTICES ON MAINTAINING COMPLIANCE

&

SELF-EVALUATION OF YOUR COMPLIANCE PROGRAM

- MIKE ABRIL, VP LEGAL AND REGULATORY AFFAIRS, SAN JUAQUIN VALLEY COLLEGE
- STEVEN GOMBOS, RITZERT & LEYTON, P.C.

AND

- PETER LEYTON, RITZERT & LEYTON, P.C.

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INTRODUCTION

- Peter Leyton & Mike Abril
  - Maintaining Compliance
  - Self-Evaluation and Assessment
  - The San Joaquin Valley College Experience
- Steve Gombos & Peter Leyton
  - Compliance Activity Post Obama
  - Lessons Learned From Recent and Ongoing Case Studies

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GENERAL STANDARDS TO ESTABLISH A COMPLIANCE PROGRAM

- U.S. Federal Sentencing Guidelines for Organizations, Seven Key Criteria To Establish An Effective Compliance Program Including
  - Oversight by High Level Personnel
  - Due Care in Delegating Discretionary Authority
  - Effective Training and Communication to All Levels of Employees
  - Monitoring, Auditing, Reporting and Correcting Wrongdoing
  - Consistent Application of Standards
- Use of The Guidelines That Describe A "Good Citizenship" Model Can Be An Important Consideration By DOE, DOJ and State AG's Re: Whether to Prosecute, Fine or Debar An Organization

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LEADERSHIP AND CULTURE

- There Is No Single Model For A Compliance Program In Higher Education
- A Detailed Regulatory Review Is Necessary, e.g. Title IV
  - 90/10
  - Placements
- The Focus Should Be On
  - Requirements + Policies + Practices
- There Needs To Be Clear Assignment of Roles and Responsibilities
- The Schools Ethical Culture Is Critical Component To Successful Programs and Processes

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INTEGRATION OF COMPLIANCE PROGRAM INTO THE BUSINESS

- Goal Is To Create Ownership of Responsibility Across The Organization
- Embedded within the Culture of the Organization
- Is Your Model
  - Ad Hoc – informal, inconsistent, incomplete
  - Fragmented – some controls in place but not consistent
  - Defined – controls are documented and standardized
  - Mature – controls are integral part of school and periodically reviewed
  - Optimal Goal – regular review and feedback, continuous improvement, automation

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COMMON MEASURES OF SUCCESS

- Policies and Procedures Manuals
  - Do You Have Them?
  - Are They Routinely Reviewed and Updated?
- Communication, Education and Training
  - What Education and Training Regarding Compliance Takes Place?
- Third Party Inquiries
  - To What Extent Are There Student, Employee or Regulatory Agency Complaints Or Inquiries
- Results of Audits, Program Reviews, Accrediting Agency Reviews, Annual Compliance Audits, Annual Financial Audits and Corrective Action Plans

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COMMON PROBLEMS

- Documentation
  - Sloppy and Poor
    - missing signatures, poor copies or scanning
  - Missing
  - Conflicting and Unresolved
- Examples
  - Exit interviews not done or done incorrectly
  - LOAs Not Documented Or Contrary To School Policy
  - COD Reporting
  - Exceptions Not Documented
  - High School diploma issues (foreign, home school, diploma mills)

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COMMON PROBLEMS

- Lack Of Communication Between departments, management and staff
- Discord between departments
- Academic staff unaware of impact of decisions on FA eligibility
- Catalog and policy updates not rolled out, not explained
- Staff not up to date on current rules
- Incomplete P&P manual

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COMMON PROBLEMS

- Lack of understanding of R2T4
- Not monitoring maximum timeframe for SAP
- Less than full eligibility offered for loans or proof not in file
- Improper application of professional judgment
- Drug and alcohol policy biennial review not done
- consumerism requirement Issues
- Reconciliation not done monthly

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SAN JOAQUIN VALLEY COLLEGE EXPERIENCE

- Americans with Disabilities Act (ADA)
  - Employees — H.R. Director → H.R. Director/Legal
  - Students — Director of Student Services → H.R./Legal
- Attendance documentation — Academic Affairs
- Arbitration policy — H.R. Director→Legal
- Code of conduct — H.R./Accreditation Liaison Officer
- Complaint handling — V.P. Administration
- Clery act\ASR — V.P. Administration → Legal
- Credit hours — V.P. Financial Aid
- Cybersecurity — Director of Information Systems
- Drug and alcohol — V.P. Administration → Legal
- Employee handbook — H.R. Director
- Faculty qualifications — Academic Affairs

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- Family medical leave act (FMLA) — H.R. Director
- Family educational Rights and privacy act — Corp. Registrar → Legal
- Gainful employment — Chief Administrative Officer (C.A.O.)
- Incentive compensation — C.A.O. / V.P. Financial Aid
- Loan collection — Chief Financial Officer
- Misrepresentation — Chief Administrative Officer
- Refund policy — V.P. Financial Aid
- Sexual harassment\Title IX — V.P. Administration
- State authorization — Legal
- Satisfactory academic progress — V.P. Financial Aid
- TCPA — Contact Center Director → Legal
- Transfer policy — Academic Affairs

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PROGRAM REVIEW HOT TOPICS

- Distance education
- Gainful Employment
- Placement
- Clery Act
- Consumerism
- 90/10
- Administrative Capability
- New Audit Guide
- Training
- Incentive Compensation

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INCENTIVE COMPENSATION REMAINS A HOT BUTTON

- 7/1/2011 Changes – No Safe Harbors and expanded coverage
- Covered Employees [Admissions/Financial Aid]
- Senior Management and related exposure
- Compensation of any kind

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INCENTIVE COMPENSATION HYPOTHETICAL – GENERAL EMPLOYEES

- Pre-Admission Activity prospective students
- Tours and pre-admission advising or information
- Pay raises to tour guides – absence of plan, inconsistent adjustments, and multiple adjustments
- Transfer to Admissions Department adjust to normalize pay

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INCENTIVE COMPENSATION – HYPOTHETICAL – FINANCIAL AID PLANNERS

- Program Review inquiry about financial aid default compensation covered employees
- Consulting relationship
- Absence of ED guidance
- 2012 Guidance
- Normalizing pay and multiple adjustments
- Assistance in FAFSA process

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PROGRAM REVIEW DETERMINATIONS

- WHAT DO YOU DO IF THE DEPARTMENT ISSUES A FPRD SIX YEARS AFTER THE PROGRAM REVIEWERS WERE ON SITE?

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TRANSACTIONS INCLUDING FOR PROFIT TO NON-PROFIT

- INTEREST IN TRANSACTIONS HAS INCREASED
- SOME CLOSINGS ARE TAKING PLACE
- STATUS OF CONVERSIONS TO NFP

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WHAT IS YOUR DUTY TO REPORT FRAUDULENT ACTIVITY?

- WHAT DO YOU DO IF YOU DISCOVER A KEY EMPLOYEE, SUCH AS THE REGISTRAR, WAS FALSIFYING RECORDS FOR SELECTED STUDENTS FOR YEARS TO ADMIT, TO MAINTAIN ENROLLMENT AND TO MAINTAIN TITLE IV?

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LATE ANNUAL AUDIT FILINGS, COMPOSITE SCORE RECALCULATION, LETTERS OF CREDIT

- WHAT DO YOU DO IF THE AUDIT AS FILED ON TIME WAS INCORRECT?
  - IS THIS A LATE AUDIT?
  - WHAT ARE THE CONSEQUENCES?
- WHAT DO YOU DO IF YOU ARE REQUIRED TO POST A LETTER OF CREDIT?

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PLACEMENT VERIFICATION

- WHAT DO YOU DO IF THE ENFORCEMENT UNIT WANTS TO VERIFY YOUR PLACEMENT RATE REPRESENTATIONS TO THE ACCREDITING AGENCY AND THE PUBLIC?

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BEST PRACTICES -- PREPARE FOR ON-SITE VISITS

- ALWAYS EXPECT A VISIT – DON'T WAIT FOR THE PROGRAM REVIEW LETTER
- INVOLVE OTHER DEPARTMENTS – NOT JUST FA
- ARE THERE RED FLAGS?
  - ARE YOU LISTENING TO STAFF CONCERNS?
  - ARE YOU LISTENING TO STUDENT COMPLAINTS?

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BEST PRACTICES – POLICIES AND PROCEDURES

- Make sure there is consistency in all publications of the school
- Are current rules, regulations and guidance reflected?
- Are your business rules stricter than ED's?
  - Are they being followed?
  - Are exceptions allowed?
  - How are exceptions documented
- Are all required Rules documented?

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BEST PRACTICES – RECORDS

- Is your ECAR up to date?
- When was it last reviewed?
- When is it necessary to update the ECAR?
- Are all records easily accessible?

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COMPLIANCE ACTIVITY AT THE DEPARTMENT UNDER SECRETARY DEVOS

- BROAD SWEEP
  - REGULATORY REFORM
  - NEGOTIATED RULEMAKING
    - BORROWER DEFENSE TO REPAYMENT
    - GAINFUL EMPLOYMENT
    - FINANCIAL RESPONSIBILITY
  - ENFORCEMENT UNIT
  - TITLE IX
  - ENDING MOU'S WITH CFPB
- WORKING LEVEL
  - PROGRAM REVIEWS
  - AUDITS
  - TRANSACTIONS

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COMPLIANCE ACTIVITY AT ACCREDITING AGENCIES SINCE THE INAUGURATION

- ACICS LITIGATION CONTINUES
  - APPLICATION FOR RECOGNITION
  - MAY AGENDA OF NACIQI
- MANAGING THE INFLUX AT OTHER AGENCIES
- LEGISLATIVE SOLUTION TO 18 MONTH REQUIREMENT
- ACTIVE ENFORCEMENT
  - SELECTIVE
  - EMPHASIS ON COMPLIANCE
- INCREASE IN SHOW CAUSE MATTERS
- REAUTHORIZATION OF HEA
  - WHAT IS THE FUTURE OF ACCREDITING AGENCIES AND OF NACIQI?

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CURRENT COMPLIANCE ACTIVITY AT STATE AGENCIES

- STATE ATTORNEY GENERAL LITIGATION
  - ACICS
  - BD2R
  - CONSUMER PROTECTION
- INDIVIDUAL STATES
  - CALIFORNIA
  - MASSACHUSETTES
  - MARYLAND

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PETER LEYTON

Peter is co-founder of the Washington, D.C. area law firm of Ritzert & Leyton, P.C. and head of the firm's education practice group. Since 1980, Peter has represented many institutions of higher education, publicly traded companies, private investment groups and others with respect to resolving regulatory/compliance matters as well as with respect to achieving desired transactional results through mergers, acquisitions and reorganizations. The firm has seven attorneys actively involved in the postsecondary education sector and is regularly involved with the U.S. Department of Education (DOE), national, regional and programmatic accrediting agencies, state licensing and other regulatory agencies and other third parties. Peter has served three two-year terms on the Association of Private Sector Colleges and Universities and predecessor board of directors. He received his law degree from Catholic University in 1980, a master's degree in public administration from American University in 1974, and a bachelor's degree in political science from Antioch College in 1971.

Ritzert & Leyton, P.C., 11350 Random Hills Road, Suite 400, Fairfax, Virginia 22030; pleyton@ritzert-leyton.com; (703) 934-2660

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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 fifteen 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.

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STEVEN M. GOMBOS

Steve Gombos represents institutions of higher education in all areas of the Firm's education practice. Steve leads the Firm's litigation and investigation practices and his representation related to R&L's higher education practice has included litigation in federal courts throughout the United States, internal investigations, OIG investigations, qui tam and government false claims actions, actions against the Department of Education and the defense of owner/management in white collar criminal cases.

He regularly handles compliance, regulatory, accreditation, and business issues related to the day-to-day operation of Title IV schools and business transactions. Steve has significant trial experience in cases involving commercial disputes, business torts, employment, and professional liability matters. He also brings considerable expertise to the negotiation of mergers and acquisitions and corporate investments in higher education.

Telephone: (703) 934-9831
Email: sgombos@ritzert-leyton.com

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