

Policy and Regulatory Insights into K-12 and Higher Education

Key issues investors and executives
need to know

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May 29, 2009



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Introduction

- Transformation of U.S. educational policy and regulatory landscape
 - Concurrent expansion and contraction in resources available to educational institutions at all levels, in for-profit sector as well as public and non-profit sectors
 - Push by governments and policymakers to accelerate reforms at all levels
- Education is regulated industry, and compliance with regulatory requirements is mission-critical
 - Legal developments in the United States in areas such as individual privacy, protection of intellectual property, and data protection measures pose additional operational burdens on all types of educational institutions
 - Noncompliance may have significant adverse financial effects
- Outside the United States, governments are seeking to expand educational opportunities at all levels
- Each of these developments presents both increased opportunities and risks for educational institutions and corresponding increased opportunities for companies that provide goods and services to these institutions

Introduction, cont'd

- K-20 legal developments and business opportunities
 - Economic stimulus legislation: American Recovery and Reinvestment Act of 2009 (ARRA)
 - Distance education
 - Privacy of student records
 - Identity theft protection
- Additional K-12 legal developments and business opportunities
 - Charter schools
 - No Child Left Behind Act of 2001 (NCLB)
- Additional postsecondary education legal developments and business opportunities
 - Student aid
 - Textbooks
 - Peer-to-peer file sharing
 - Campus safety
- Intellectual property
- Globalization

Economic Stimulus Legislation

- ARRA provides approximately \$100 billion for education
- A primary principle of ARRA is to improve student achievement through school improvement and reform, focusing on four specific areas:
 - Making progress toward rigorous college- and career-ready standards and high quality assessments that are valid and reliable for all students, including English language learners and students with disabilities
 - Establishing pre-K to college and career data systems that track progress and foster continuous improvement
 - Making improvements in teacher effectiveness and equitable distribution of qualified teachers for all students, particularly students most in need
 - Providing intensive support and effective interventions for lowest performing schools

Source: “The American Recovery and Reinvestment Act of 2009: Saving and Creating Jobs and Reforming Education,” U.S. Department of Education, March 7, 2009, <http://www.ed.gov/policy/gen/leg/recovery/implementation.html>

Economic Stimulus Legislation, cont'd

Program	Total Appropriation (estimated)
State Fiscal Stabilization Fund (All levels)	\$53.6B
Special Education (K-12)	\$12.2B
Title I (K-12)	\$10B
School Improvement Grants (K-12)	\$3B
Enhancing Education through Technology (K-12)	\$650M
Teacher Incentive Fund (K-12)	\$200M
Impact Aid (K-12)	\$100M
McKinney-Vento (K-12)	\$70M

Economic Stimulus Legislation, cont'd

Program	Total Appropriation (estimated)
Research and Development (Postsecondary)	\$18 billion –\$10 billion to National Institutes of Health –\$3 billion to National Science Foundation (NSF) –\$5 billion to various other agencies
Federal Pell Grants (Postsecondary)	\$15.84 billion to increase maximum discretionary Pell Grant by \$500 to \$4,860 and to cover Pell Grant “shortfall” (difference between authorized and appropriated amount)
Federal Work Study Program (Postsecondary)	\$200 million
American Opportunity Tax Credit (Postsecondary)	Replaces Hope Tax Credit with \$2,500, 40% credit; textbooks can now be covered

Economic Stimulus Legislation, cont'd

Program	Total Appropriation (estimated)
<p>Job Training Programs under Workforce Investment Act (Postsecondary)</p>	<p>\$3 billion</p> <ul style="list-style-type: none"> - \$1.25 billion for dislocated workers - \$1.2 billion for youth activities - \$500 million for adult employment and training activities - \$750 million for competitive grant programs for worker training and placement in high growth and emerging industry sectors such as energy and healthcare
<p>Health Information Technology (Postsecondary)</p>	<p>National Institute of Standards and Technology, in consultation with NSF, must establish program to assist higher education institutions in establishing multidisciplinary Centers for Health Care Information Enterprise Integration</p> <p>U.S. Department of Health and Human Services and NSF must provide assistance to higher education institutions to establish or expand medical health informatics education programs</p>

Economic Stimulus Legislation, cont'd

Statewide Data Systems (all levels)

Core ARRA Reform goal is establishing data systems and using data for improvement

- Examples of potential investments:
 - Develop or enhance existing data systems to provide teachers access to student data in such areas as attendance, grades, course schedules, and disability or English Language Learner status, and data that show academic performance and growth and whether students are on track to meet standards and graduate from high school;
 - Train school staff to use data to identify specific help students need to succeed, adjust classroom instruction to address student strengths and weaknesses, and target professional development and other resources on student and teacher needs;
 - Track number and percentage of students by school who graduate from high school and complete at least one year's worth of college credit, and use such information to strengthen high school programs;
 - Link districts' multiple data systems (including student, financial, and personnel) and use resulting information for analyses and reports that enable community, district, and school leaders to understand better educational and cost effectiveness of district programs and strategies and allocate resources accordingly;
 - Launch easy-to-use online Individualized Education Program (IEP) system for students with disabilities that is aligned with state academic standards and can be used by educators to create content-rich IEPs

Establishing Data Systems and Using Data for Improvement

- The Coalition for Student Achievement report on investing ARRA funds recommends states comply with all 10 elements of the Data Quality Campaign, a national, collaborative effort that urges state policymakers to improve collection, availability, and use of high-quality education data to improve student achievement
 - (1) Unique statewide student identifier that connects student data across key databases across years
 - (2) Student-level enrollment, demographic and program participation information
 - (3) Ability to match individual students' test records from year to year to measure academic growth
 - (4) Information on untested students and reasons they were not tested
 - (5) Teacher identifier system with ability to match teachers to students*
 - (6) Student-level transcript information, including information on courses completed and grades earned*
 - (7) Student-level college readiness test scores*
 - (8) Student-level graduation and dropout data
 - (9) Ability to match student records between P-12 and higher education systems*
 - (10) State data audit system assessing data quality, validity, and reliability

* Elements with lowest state compliance

Establishing Data Systems and Using Data for Improvement, cont'd

- As of 2008, only 6 states had all ten essential elements
- Florida:
 - First state to enact policy establishing data warehouse spanning K-12 and postsecondary – K-20 Data Warehouse
 - First state to comply with Data Quality Campaign elements
 - K-20 Data Warehouse is longitudinal data system
 - Follows each student through postsecondary education into workforce
 - Relies on unique student identifier to provide linkages between student, staff, teacher certification, and assessment databases
 - Collects information in four key data subject areas called “facets,” which are all linked
 - Student demographics and performance
 - Educational institution information
 - Employee information
 - Educational curriculum
 - Provides capability to track students over time and across delivery systems and to perform trend analyses

Establishing Data Systems and Using Data for Improvement, cont'd

- California
 - Legislation requires:
 - Assignment of individual, non-personally identifiable number to each K-12 student
 - Establishment of California Longitudinal Pupil Achievement Data System (CALPADS) that includes statewide assessment data, enrollment data, teacher assignment data, and other elements required to meet federal reporting requirements under NCLB
 - Establishment of California Longitudinal Teacher Integrated Data Education System (CALTIDES) to facilitate teacher assignment monitoring through automation and enable monitoring of Highly Qualified Teacher requirements under NCLB
 - Implementation of data system is ongoing – only 6 of 10 Data Quality Campaign elements satisfied
- Maryland (3) and Idaho (2) – lowest number of Data Quality Campaign elements satisfied
- Other sources of funding for data system implementation:
 - Institute of Education Services has awarded \$150 million in grant money to 41 states and District of Columbia under Statewide Longitudinal Data Systems Grant Program

ARRA Appropriations for Title I

(Elementary and Secondary Education Act)

Grant	Total Appropriation (Estimated)	Timing of Appropriation to State	Use of Funds
Title I, Part A Targeted Grants and Education Finance Incentive Grants	\$10 billion	50% end of March 2009 50% by October 2009 *In addition to Regular FY 2009	Aid to high-poverty districts and to address equity deficiencies in state funding formulae Without waiver, obligate 85% by Sep. 30, 2010, and remaining by Sep. 30, 2011
School Improvement Grants	\$3 billion	Available Fall 2009	Grants to State Education Agencies (application required), which then sub-allocate at least 95% to schools in "school improvement" Priority to school districts that (a) serve lowest-achieving schools, (b) demonstrate great need, and (c) demonstrate strong commitment to success of low-achieving schools

ARRA Appropriations for IDEA

(Individuals with Disabilities Education Act)

Grant	Total Appropriation (estimate)	Timing of Appropriation to State	Use of Funds
Part B grants	\$11.3 billion	50% end of March 2009 50% by October 2009 *In addition to Regular FY 2009	Grants for special education programs serving students age 3-21 School districts must obligate majority of funds during 2008/09 and 2009/10 school years and the rest by Sept. 30, 2011
Part B preschool grants	\$400 million	Same	Grants for special education programs at pre-schools serving students aged 3-5 Obligation rules same as above
Part C grants	\$500 million	Same	Grants for special education programs serving students age 0-2

Other ARRA Appropriations

Appropriation Type	Total Appropriation (estimate)	Description
Innovation and Improvement Grants	\$200 million	Funds must be used to make competitive grants to school districts (including charter school districts) or States, or a partnership of a school district or State and at least one nonprofit, to develop and implement performance-based teacher and principal compensation systems. Funds available Fall 2009 (application requirements outlined in further guidance).
Education Technology Grants	\$650 million	Competitive grant program to improve student achievement through use of technology in elementary and secondary schools. Funds available Fall 2009 (application requirements outlined in further guidance).
Impact Aid	\$100 million	Funds for construction of shovel-ready facility projects in school districts that have within their boundaries parcels of land that are owned by Federal Government or have been removed from local tax rolls by Federal Government, including Indian lands. 40% of funds distributed by formula, 60% by competitive grants for “shovel ready” projects.
McKinney-Vento Act	\$70 million	Grants to states are made in proportion to number of homeless students in each state identified in 2007-08 school year relative to number of homeless students nationwide. States subgrant to school districts.

State Fiscal Stabilization Fund – Overview -- \$53.6 Billion

\$53.6 billion State Fiscal Stabilization Fund			
Program	Total Appropriation (estimate)	Timing of Appropriation to State	Use of Funds
Education	\$39.5 billion	67% starting in April 2009 (pending application) 33% starting in July 2009 (pending application)	To reduce state budget shortfalls in elementary, secondary, and postsecondary education Local Education Agencies must obligate by Sept. 30, 2011
Government Services	\$8.8 billion	Same as “Education”	For general government services, including education and school construction Governors must obligate by Sept. 30, 2011
Competitive Education Grants	\$5 billion	Two rounds – late Fall 2009, Summer 2010	To encourage and reward innovative states and school districts Obligation rules TBD

ARRA Competitive Awards

- ARRA creates two new award programs:
 - State Incentive Grants (“Race to the Top Funds”)
 - Invest in What Works and Innovation fund (“Innovation Fund”)
- General details
 - \$5B is set aside for award programs
 - Up to \$650M for Innovation Fund
 - Remainder for State Incentive Grants (less administrative costs)
 - Money for these award programs is appropriated through State Fiscal Stabilization Fund, but both programs will be administered by U.S. Department of Education (ED) and funds will be awarded on competitive basis.

Race to the Top Fund

Overview

- State Incentive grants will be made directly to state governments.
- ED Guidance description: Race to the Top Fund will be “national competition among states for a \$4.35 billion . . . fund to improve education quality and results statewide. The Race to the Top fund will help states drive substantial gains in student achievement by supporting states making dramatic progress on the four reform goals described above and effectively using other ARRA funds. “
- Funds will be distributed in two-rounds: Fall 2009 and Spring 2010
- State must distribute at least 50% of grant to school districts based on their relative shares of Title I funding for most recent year

Race to the Top Fund, cont'd

State Application Requirements

- Governor must submit application for state to receive grant. Application must:
 - (1) Describe status of State's progress toward meeting objectives and strategies it is using to ensure that students in all subgroups continue to make progress toward state standards, and explain progress it is making toward meeting several education “assurances” required to receive state fiscal stabilization funds:
 - increase teacher effectiveness and address inequities in distribution of highly qualified teachers
 - establish and use pre-K-through-college and career data systems to track progress and foster continuous improvement
 - make progress toward rigorous college- and career-ready standards and high-quality assessments
 - support targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring

Race to the Top Fund, cont'd

State Application Requirements, cont'd

- (2) Describe achievement and graduation rates of public elementary and secondary school students in state
- (3) Describe how state would use grant funding to improve student academic achievement, including how state will allocate funds to give priority to high-need local educational agencies
- (4) Include plan for evaluating state's progress in closing achievement gaps

State Fiscal Stabilization Fund
14005(c)

Overview

- ED Description: Innovation Fund awards will “be available through a competition to districts and non-profit groups with a strong track record of results.”
- Innovation Fund will be used to make awards to “eligible entities”:
 - School districts
 - Partnership between nonprofit organization and
 - One or more school districts
 - Consortium of schools
- Future ED Guidance will clarify application procedure

Innovation Fund, cont'd

Eligibility Criteria

- Innovation Fund awards will be made to eligible entities that:
 - Have significantly closed achievement gap between various subgroups of students under Elementary and Secondary Education Act
 - Have exceeded state's annual measurable objectives for two or more consecutive years or have significantly increased academic access for all groups of students
 - Have made improvement in other areas, such as graduation rates or increased recruitment and placement of high quality teachers
 - Have established partnerships with private sector (including philanthropic organizations), including required showing that these partnerships likely will result in matching funds from private sector
- If eligible entity includes nonprofit organization, eligible entity meets eligibility requirements if such nonprofit organization has record of meeting them

State Fiscal Stabilization Fund

14007(b)-(c)

Innovation Fund, cont'd

Use of Funds

- Eligible Entities may use funds to:
 - Expand their work and serve as models for best practices
 - Work in partnership with private sector and philanthropic community
 - Identify and document best practices that can be shared and taken to scale based on demonstrated success.

State Fiscal Stabilization Fund Section
14007(a)(3)

- School districts, colleges, universities and other educational institutions are eligible for ARRA broadband funding
- U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA), Broadband Technology Opportunities Program (BTOP)
 - \$4.7 billion in competitive grants to promote broadband deployment and adoption
 - Funds can be used to acquire networking equipment, hardware, software, and infrastructure for broadband services and to ensure access to broadband by low-income, unemployed, aged or otherwise vulnerable populations in order to provide educational opportunities
 - At least \$250 million to be used for expanding “public computer center” capacity, including at community colleges
 - At least \$200 million to be used to promote increased broadband adoption
 - At least one grant awarded in each state or territory
 - NTIA may consult with affected states and territories

Broadband, cont'd

- U.S. Department of Agriculture, Rural Utilities Service (RUS), Distance Learning, Telemedicine and Broadband Program
 - \$2.5 billion in grants, loans and loan guarantees for broadband infrastructure in rural areas without adequate access to broadband in order to promote economic development
 - Preference given to previous RUS funding recipients
 - No project receiving BTOP funding can be funded under RUS program, but applications pertaining to same project can be submitted to both agencies

Broadband, cont'd

- Opportunity for vendors and school districts and other educational institutions to partner in developing funding proposals
- Funding guidelines for both programs are expected in late June 2009
- First round of funding applications expected in August/September 2009
- Three funding cycles expected
- All awards must be made by September 2010
- State and local support important for success of funding application
- Projects must be substantially completed within two years of receiving funding, and applicants must show that the project would not have been implemented within the grant period without BTOP grant assistance

Distance education

- Distance education is expanding at all education levels, although some public universities have scaled back because of economic downturn
 - Content providers
 - Delivery platforms

Distance education, cont'd

- Technology, Education, and Copyright Harmonization Act of 2002 (TEACH Act)
 - Copyright exemption for distance education to permit digital transmission of copyrighted works by government or accredited nonprofit education institutions
 - Allows for non-infringing use of copyrighted works as part of a course, where certain statutory requirements are met. If these requirements are not met, use of the material will have to qualify as "fair use" or permission from the copyright holder must be obtained
 - Accredited institutions required to:
 - Institute copyright policies
 - Provide accurate information about copyright
 - Promote copyright compliance
 - Provide notice to students that course materials may be copyrighted
 - Downstream controls must be instituted including, e.g., technological measures that reasonably prevent:
 - Retention in accessible form for longer than a class session
 - Unauthorized further dissemination in accessible form
 - No interference with copyright holder's technological measures that prevent such retention and dissemination

Distance Education, cont'd

- Continuing concern regarding integrity
 - Higher Education Opportunity Act (HEOA) requires through accreditors that postsecondary education institutions have processes to establish that student who registers for distance education program is same student who participates in and receives credit for program (Effective August 14, 2008)
 - Through “negotiated rulemaking” ED has developed draft regulation
 - Requires use of such methods as secure login and passcode, proctored examinations, or “new or other technologies and practices that are effective in verifying student identification”
 - Requires use of processes that protect student privacy and notice to students of any additional student charges associated with identity verification at time of registration or enrollment
- Opportunities/solutions
 - Username and password and examinations with proctor are common, but may become inadequate as new technologies evolve
 - New application for other forms of identity recognition technology?

Distance Education, cont'd

- Approximately 1,030,000 K-12 students engaged in online courses in 2007-2008, a 47% increase since 2005-2006.¹
- As of Fall 2008, some form of significant full or part-time online learning opportunities for students exists in 44 states (either through state/district programs or charter schools) .²
- 17 states offer both supplemental and full time online options for students (e.g., many states in the western US– California, Oregon, Washington, Nevada, Idaho).
- 23 states have supplemental programs but no full-time options.
- 4 states have full-time opportunities but no supplemental programs.
- 6 states have neither – predominately in the northeast – New York, New Jersey, Vermont, Maine, Rhode Island.
- Many are state-led programs (approximately 34).
 - State-led programs which offer full courses, teachers and student support include Florida, Illinois, Michigan,
 - State-led initiatives, which provide online resources or serve as a clearinghouse for online courses, include Washington, Texas, and Oregon
- 21 states have full time online schools; most, but not all are charter programs.

¹ Sloan Consortium Survey

² Evergreen Consulting, Keeping Pace with K-12 Online Learning

Distance Education, cont'd

- Beginning in 2009-2010, school districts in Florida will be required to offer a full-time virtual instruction program to students in grades K-8.
- Alabama's Board of Education has passed a resolution requiring students to take and pass an on-line/technology enhanced course.
- Wisconsin changed its charter school laws in 2008 to allow virtual charter schools to operate with public funding in response to a Dec. 2007 state appellate court ruling.
- In response to state task force reports to their respective state legislatures, Wyoming and Hawaii passed legislation in 2008 to permit full-time online schools to operate within those states.¹
- Indiana, which has no state-led program and explicitly denies funding to predominately-online charter schools, has established an interim study committee on virtual learning to review and make recommendations to the state legislature regarding virtual schools.

¹ Glass, Gene V. The Realities of K-12 Virtual Education

Distance Education, cont'd

- Overview:
 - Online learning regulated at the state level, with different rules governing whether online education is authorized, whether it can be full time, whether virtual charter schools may be established and funded, geographic limitations on enrollment, manner and extent of funding
- Virtual Charter Schools – Most states that permit charter schools permit online education through charter schools in some form, although Indiana, for example, currently prohibits funding for virtual charter schools, severely affecting their viability in the state. Geographic limitations built into existing charter school statutes also hampers their viability in certain states.
 - For example, Maryland charter law requires students to be “physically present on school premises”; therefore, currently there are no online charter schools in that state.

Distance Education, cont'd

- Geographic limitations/Open-enrollment.
 - Many state online education programs are limited to students who live in the a school's geographic district.
 - California charter school laws limit their operation to contiguous counties
 - Florida's virtual program limits enrollment to students who reside within the district of a school that has an established virtual program.
 - Others have no such limitations – Charter schools in South Carolina, among other states, can service students throughout the state.

Distance Education, cont'd

- K-8
 - Availability of K-8 instruction is more limited than secondary education, but growing.
 - Until 2008, Nevada prohibited two state-wide charter schools from serving K-3.
 - Florida and Missouri are implementing K-8 online education.
 - A number of states have pilot programs on K-8 online instruction; for example, Mississippi.

Distance Education, cont'd

- Funding:
 - The manner of funding online education varies greatly from state to state
 - South Carolina funds virtual charter schools by the same formula it funds all charter schools; Colorado, Nevada, Wisconsin, and Idaho, among others, do not.
- Standards and Accountability
 - Certification issues.
 - Enhanced training for online teachers. Various states require online teachers to have additional training.
 - Wisconsin law requires 30 hours of professional development designed to prepare a teacher for online teaching.
 - Texas requires teachers to complete an approved professional development course.

¹ Glass, Gene V. The Realities of K-12 Virtual Education

Privacy of student records

- FERPA prohibits educational institutions from disclosing personally identifiable information from education records without consent of parent (K-12) or student (higher education)
 - Exception for disclosure to “school officials” with “legitimate educational interest”
 - Parents and students complained that school officials may have unrestricted access to records of all students
 - New ED regulations require institutions to use “reasonable methods to ensure that school officials have access to only those education records in which they have legitimate educational interests”
 - Regulations suggest preference for “physical or technological access controls” over administrative policy
 - Effective January 8, 2009
 - ED needs assessment
 - Vast majority of mid- and large-size school districts and postsecondary education institutions currently use commercial software for student information systems, which generally include role-based security features and transactional logging features
 - 6,687 small K-12 districts and 3,906 small postsecondary education institutions may not have software with access security control features; 1,619 (15 percent) may not have role-based security features; cost of acquisition of student information software estimated at \$56,665,000

Privacy of student records, cont'd

- Parents and students complained that unauthorized parties obtain access to student's education records because educational institutions use widely available information (name, date of birth, Social Security Number (SSN), or student identification number) when providing access to electronic records or disclosing information by phone
- New FERPA regulations also require institutions to “use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties” to whom institutions disclose personally identifiable information from education records (effective January 8, 2009)
 - Use of widely available information is not reasonable method to authenticate identity
 - Single-factor authentication (such as standard form user name and password or PIN) may not be reasonable for all types of records in all circumstances. High-risk records (credit card information, SSN, immunization or other health records, certain records on disabled students, transcripts and grades) should receive greater protection.
 - Reasonableness depends on usual and customary good business practices and requires ongoing review and modification of procedures as standards and technologies change

Privacy of student records, cont'd

- Opportunities/solutions
 - Software applications to match school officials with education records in which they have legitimate educational interest
 - New application for identity recognition technology?

Red Flags Rule

- Federal Trade Commission issued “Red Flags Rule” pursuant to Fair and Accurate Credit Transactions Act to reduce risk of identify theft
 - K-20 institutions may be subject to Red Flags Rule to extent they lend to students, faculty, or staff or engage in other activities involving pattern of delayed payment for services rendered
 - If covered, institution must develop identity theft prevention program, including
 - Identification and detection of relevant “red flags”
 - Appropriate response to detected red flags
 - Periodic updating
 - Staff training
 - Oversight of service providers
 - Effective November 1, 2008, but enforcement deferred to August 1, 2009
- Opportunities/solutions
 - Software applications to notify of discrepancies in information and other red flags

Additional K-12 legal developments and business opportunities

- Charter schools
- NCLB

Charter Schools

- President Barack Obama supports charter schools
 - White House education reform agenda focuses on improving public education through innovative measures, including charter schools
 - States are encouraged to expand use of charter schools and to hold charter schools accountable
 - President Obama named May 3, 2009 through May 9, 2009 National Charter Schools Week
 - Secretary of Education Arne Duncan has experience with implementing charters in Chicago and supports charter schools

Charter Schools, cont'd

- The Race to the Top funds (\$4.35 billion) may be used to support charter schools. Whether charters receive an award depends on:
 - Whether state receives a grant
 - Grants to be awarded to reform-minded states. Charters should work with state to prepare Race to the Top application and generate innovative ideas
 - If state receives grant, at least 50% will be allocated to school districts through Title I, Part A formulae.
 - Does charter qualify as Title I, Part A school?
 - Stimulus legislation does not specify how state must use other 50% of grant
 - Work with state in application process so that reforms and funding for those reforms can apply to charter

Charter Schools, cont'd

- Charters can access directly Innovation Fund awards
 - “Eligible entities” include partnerships between nonprofit organizations (such as nonprofit charter schools) and school districts
- Charter schools may also be able to obtain Title I School Improvement grants
 - School Improvement grants are made to support low-performing schools
 - \$3 billion for school improvement grants in ARRA
 - Funds will not be awarded directly to charter schools, but there is an interesting opportunity for charter schools to use expertise to work with school districts and drive reform

Charter Schools, Cont'd

- 10 states have not authorized charter schools
 - Alabama
 - Kentucky
 - Maine
 - Montana
 - Nebraska
 - North Dakota
 - South Dakota
 - Vermont
 - Washington
 - West Virginia

Charter Schools, cont'd

- State laws governing charter schools vary significantly
 - 26 states (as well as D.C. and Puerto Rico) restrict number of charter schools that may be authorized
 - Some states limit number of charter schools authorized
 - Illinois 60
 - Massachusetts 120
 - Certain states restrict location of charter schools
 - In Missouri start-up charter schools may open only in Kansas City and St. Louis school districts

Charter schools, cont'd

- 14 states do not have restrictions on number of charter schools that are authorized
 - Arizona
 - Colorado
 - Florida
 - Georgia
 - Kansas
 - Maryland
 - Minnesota
 - Nevada
 - New Jersey
 - Oregon
 - Pennsylvania
 - South Carolina
 - Virginia
 - Wyoming

Charter schools, cont'd

- Funding amounts per-pupil may be equivalent to or less than amount allotted to schools in district
 - Indiana pays charter schools 100% of per-pupil funding that district schools receive
 - In some states, such as Arizona and Rhode Island, portion of funds allotted to charter schools is paid to local school board for oversight services
 - In other states, including Illinois and Oregon, funding is negotiated between charter school and the local school district that authorized charter school

No Child Left Behind Act of 2001

- There will continue to be business opportunities related to NCLB, such as:
 - Supplementary Education Services – before and after school tutoring
 - Assessments
- NCLB will be reauthorized in the near future
 - Secretary Duncan is on a listening tour regarding changes to NCLB

Additional postsecondary legal developments and opportunities

- “Program integrity triad”
 - State education licensure by state education agencies
 - Accreditation by institutional and programmatic accreditors
 - Federal student financial aid
 - Authorized by Higher Education Act, recently amended by Higher Education Opportunity Act (HEOA)
 - Administered primarily by ED
 - Participation requires state education licensure and institutional accreditation
- Federal student financial aid requirements and opportunities
 - Student aid refunds
 - Textbooks
 - Peer-to-peer file sharing
 - Campus safety

Federal Student Aid

- Federal student financial aid is complex system undergoing significant change
 - Credit crisis resulted in significant contraction in number of lenders in Federal Family Education Loan (FFEL) program and private education loans and emergence of federal government as secondary market for student loans
 - President Obama has proposed to abolish FFEL program in favor of Federal Direct Loan Program and to use resulting savings to increase Federal Pell Grant funding for low-income students
 - Lenders such as Sallie Mae are positioning themselves to service ED student loan portfolio
 - Guarantee agencies may continue to provide financial literacy and default management services to postsecondary education institutions
 - Post-9/11 GI Bill significantly increases aid available for veterans
 - Congress and public are pressuring postsecondary education institutions to control costs and price of postsecondary education

Federal Student Aid, cont'd

- Higher Education Act requires adoption of federal student aid regulations through “negotiated rulemaking”
- ED has recently completed negotiated rulemaking under HEOA
 - Student loans (lender and school issues)
 - Accreditation
 - Various other issues
 - ED will issue proposed rules for public comment and is expected to issue final rules by November 1 to become effective July 1, 2010
- ED has announced second round of negotiated rulemaking
 - Foreign schools
 - Incentive compensation and other issues
 - ED is conducting public meetings and is expected to establish negotiated rulemaking teams by September

Student Aid Refunds, cont'd

- Federal student aid regulations create opportunities for niche businesses to streamline business processes and improve student services
 - For example, ED regulations require institutions to make “refund” to student of difference between federal student aid award and institutional charges in prescribed manner and timeframe
 - Failure to do so may result in monetary liability or other sanctions
- Opportunities/solutions
 - Higher One, Inc., contracts with institutions to manage refund process
 - Students receive “Higher One” stored value/debit card
 - Institutions deposit refund on Higher One card rather than issue check
 - Students can use Higher One card on campus and with merchants
 - Since its founding in 2000, Higher One has disbursed over \$6 billion dollars in refunds for public and private higher education institutions throughout the country

Textbooks

- HEOA seeks to decrease cost of textbooks by enhancing disclosure
 - HEOA requires colleges and universities to provide textbook information on Internet course schedules
 - International Standard Book Number
 - Retail price
 - Current and next academic period
 - Effective July 1, 2010
 - ED is prohibited from issuing implementing regulations
- Opportunities/solutions
 - In coming year colleges and universities will be seeking means of compliance with disclosure requirements
 - Opportunity for outsourcing?

Textbooks, cont'd

- HEOA promotes other cost-saving measures
 - HEOA encourages institutions to disseminate information regarding cost-saving measures such as
 - Textbook rentals
 - Used textbook purchases
 - Textbook buy-back programs
 - Alternative content delivery programs
 - HEOA requires publishers to sell textbooks and course materials separately
 - Effective July 1, 2010; ED is prohibited from issuing implementing regulations
- New bill in House (H.R. 1464, 3/12/09 (learning opportunities with creation of low cost text books Act of 2009 (LOWCOST)) would require certain federal agencies to develop freely available open source educational materials for college level math and science subjects
- Opportunities/solutions
 - Market for textbook rentals, used textbook purchases, and textbook buy-back programs
 - Alternative content delivery programs
 - Amazon's Kindle
 - Google's Book Search Program

Textbooks, cont'd

- Amazon Kindle Litigation
 - On March 17, 2009, Discovery Communications filed suit against Amazon in US District Court in Delaware claiming Kindle willfully infringes on patent granted Discovery on November 20, 2007
 - Discovery is seeking treble damages, payment of legal fees, and ongoing royalty in lieu of injunction blocking Kindle sales
 - Underlying patent explicitly pertains to both electronic books and infrastructure necessary to buy and download content from device

Textbooks, cont'd

- Google Book Search Litigation
 - Stemming from Google's scanning of entire libraries of books for full-text searches on Internet
 - The Authors Guild, publishing industry, and Google entered into settlement agreement on October 28, 2008, with Google agreeing to pay total of \$125 million to rights holders of books it had scanned, to cover plaintiffs' court costs, and to create Book Rights Registry.
 - As part of settlement, Google created Google Book Settlement web site that went active on February 11, 2009. This site allows authors and other rights holders of out of print (but copyrighted) books to submit claims by January 5, 2010. Claimants will receive \$60 per full book or \$5 to \$15 for partial works. In return, Google will be able to index books and display clips in search results, as well as up to 20% of each book in preview mode. Google will also be able to show ads on these pages and make available for sale digital versions of each book. Authors and copyright holders will receive 63 percent of all advertising and e-commerce revenues associated with their works.
 - Settlement approval hearing scheduled for June 2009

Peer-to-peer file sharing

- Movie and music industries have complained of pervasive unauthorized sharing of digital copyrighted material through university-controlled networks
- In December 2008 Recording Industry Association of America announced end to strategy of litigation against individuals to pursue other strategies such as cooperation with Internet service providers:
<http://online.wsj.com/article/SB122966038836021137.html>
- Alternative legislative strategy resulted in HEOA provisions on peer-to-peer (P2P) file sharing

Peer-to-peer file sharing, cont'd

- HEOA requires colleges and universities, as a condition of participating in federal student financial aid programs, to take certain steps pertinent to copyright enforcement
 - Certify to ED that institution has developed plan to combat effectively unauthorized use of copyrighted material
 - Consider technology-based deterrents, among other approaches
 - Offer, to extent practicable, alternatives to illegal file-sharing
 - Provide students annually with description of school policies regarding unauthorized file sharing and disclosure that illegal file sharing may lead to civil and criminal liability.
 - Effective August 14, 2008

Peer-to-peer file-sharing, cont'd

- HEOA Congressional Conference Report identifies “effective technology-based deterrents” as including
 - Bandwidth shaping
 - Traffic monitoring to identify largest bandwidth users
 - Vigorous program of Digital Millennium Copyright Act (DMCA) notices
 - Variety of commercial products designed to reduce or block illegal file-sharing
- ED is expected to issue implementing regulations by November 1, 2009, to become effective July 1, 2010
- Some states are adopting similar measures
 - New Tennessee law (S.B. 3974 signed 11/12/08) requires public and private universities to develop and enforce policies to combat student copyright infringement on campus networks

Peer-to-peer file sharing, cont'd

- Opportunities/solutions
 - According to The Campus Computing Project, as of summer 2008 institutions increasingly were installing technology solutions intended to stem inappropriate P2P activity (from low of 34.6 of community colleges to high of 83.3 percent of public bachelor's colleges) <http://www.campuscomputing.net/content-item/new-campus-costs-p2p-compliance>
 - Bandwidth shaping and traffic monitoring
 - HEOA Conference Report identifies Packeteer
 - Commercial products designed to reduce or block illegal file-sharing
 - HEOA Conference Report identifies Audible Magic's CopySense Appliance for Universities and Red Lambda's Integrity
 - Development of alternatives to illegal file-sharing
 - Institutional digital content licenses

Campus Safety

- In response to tragic shooting at Virginia Tech, HEOA requires institutions to disclose emergency-response policies
 - Immediate notice to campus community upon confirmation of significant on-campus emergency or dangerous situation involving immediate threat to health or safety of students or staff, unless notice would compromise efforts to contain emergency
 - Use of electronic or cellular communications systems
 - Effective August 14, 2008
- ED is expected to issue implementing regulations by November 1, 2009, to be effective July 1, 2010

Campus Safety, cont'd

- Opportunity/solution
 - Electronic or cellular communications systems for emergency response
 - According to The Campus Computing Project's report "Campuses Invest in Emergency Notification" (Oct. 2008), institutions increasingly use e-mail (86.6 percent), voicemail (65.5 percent to campus phones, 41 percent to off-campus wired phones, and 28.5 percent to mobile phones), and text messaging (75.6 percent) for emergency notifications. <http://www.campuscomputing.net>

Intellectual Property

- **Copyright Act**
- **DMCA Rulemaking**
- **Orphan Works Developments**
- **Opportunities**

- Fair Use

- Rapid growth in digital content delivery leads to greater challenges in protecting copyrighted material and interpreting “fair use”
- If alleged infringer broadly distributes copyrighted work, particularly if for commercial purposes, copyright holder has stronger argument that infringing activity does not constitute “fair use”
- Where TEACH Act exemption is inapplicable, “fair use” defense may still be asserted, which would involve subjective consideration of:
 - purpose and character of use, including whether use is of commercial nature or is for *nonprofit* educational purposes
 - nature of copyrighted work
 - amount used in relation to copyrighted work as whole
 - effect of use on potential market for or value of copyrighted work

DMCA Rulemaking

- DMCA provides that "no person shall circumvent a technological measure that effectively controls access to a work protected under this title."
- Copyright Office is currently conducting its regular triennial rulemaking proceeding mandated by DMCA, through which Librarian of Congress may exempt certain classes of works from DMCA's anti-circumvention prohibition.
- Purpose is to update on a periodic basis the particular classes of works that are exempt from anti-circumvention measures.

DMCA Rulemaking, cont'd

- Classes of works being considered for exemption include:
 - Commercially produced and distributed DVDs used in face-to-face classroom teaching by college and university faculty, regardless of discipline or subject taught, including teachers in K-12 classrooms
 - Audiovisual works used by instructors at accredited colleges or universities to create compilations of short portions of motion pictures for use in course of face-to-face teaching activities.
 - Audiovisual works that illustrate and/or relate to contemporary social issues used for purpose of teaching process of accessing, analyzing, evaluating, and communicating messages in different forms of media
 - Audiovisual works that illustrate and/or relate to contemporary social issues used for purpose of studying process of accessing, analyzing, evaluating and communicating messages in different forms of media and that are of particular relevance to specific educational assignment, when such uses are made with prior approval of instructor
 - Audiovisual works contained in college or university library when circumvention is accomplished for purpose of making compilations of portions of works for educational use in classroom by media studies or film professors
 - Audiovisual works contained in college or university library when circumvention is accomplished for purpose of making compilations of portions of works for coursework by media studies or film students
 - Audiovisual works included in library of college or university when circumvention is accomplished for purpose of making compilations of portions of those works for educational use in classroom by professors
 - All audiovisual works and sound recordings “used in face-to-face classroom teaching by college and university faculty, regardless of discipline or subject taught” and regardless of source of legally acquired item

Orphan Works Developments

- “Orphan works” refer to works for which copyright owner cannot be identified or found, and applies to all works from images to text and includes posters, photographs, and letters
 - Multiple versions of Orphan Works legislation have failed to pass through Congress, but legislation may be re-introduced later this year
 - Proposed legislation would allow educators, libraries, and others to safely use copyrighted works if they cannot find copyright owner to acquire license
 - Opponents argue that such legislation would lead to pervasive infringement on copyright holders’ rights
 - Settlement agreement between Google and The Authors Guild relating to Google Book Search makes it possible for Google to include orphan works in its Book Search service

Opportunities

- Opportunities/solution

- Continued development of web-based technologies to connect educators and learners, in ways that will help engage students in expanded learning process, such as content hosted and shared in de-centralized “cloud computing” environment
- Use of blogs, wikis and other forms of social media used as learning tools to share and develop educational content, while managing effective policies to mitigate opportunities for misuse and personal embarrassment
- User generated content communities can be developed in manner respecting proprietary rights
- Opportunities to create orphan work registries to help identify copyright holders and categorize copyrighted material

- **Globalization**

Governments around the world and multilateral organizations are engaged in efforts to expand educational opportunities at all levels for their populations and to increase the utility derived from education. Multilateral organizations are also offering assistance.

Examples include:

- **Bologna Process:**

- Voluntary agreement among 46 government signatories creating a European Higher Education Area effective 2010.
- Establishes “3 cycles” of higher education qualification: bachelor’s (3 years), master’s (2 years) and doctorate (3 years); convergence of U.S. and European higher education models.
- Will result in “equivalency” of qualifications among signatory nations, ease of cross border transfer of credits among institutions and increase cross border employment mobility.

- **China**

- Following China’s accession to the WTO, the Chinese government began to open the education sector to foreign investment. Higher-learning, vocational, adult and secondary technical education institutions, in particular, are permitted (upon approval from China’s Ministry of Education) to work with overseas partners to run corresponding schools in China.

– China, cont'd

- Later this year, the Chinese government is expected to release details on its 12-year plan for education, which may herald new policy directives with respect to foreign investment in China's education system through the year 2020.
- Chinese government allows private investment in education:
 - In April 2009, Pearson, the international education and information company, acquired Wall Street English, one of China's leading English language training (ELT) companies, for US\$145 million. Pearson first entered the Chinese education market in 2008, through the acquisitions of Learning Education Center and Dellenglish, which provide ELT to school and college-aged students, as well as adults.
 - In November 2008 global private equity firm The Carlyle Group invested US\$50 million in Hao Yue Education Group, a private school based in Beijing that focuses on career training and development. Carlyle first entered the Chinese education market in 2007, with a US\$20 million investment in NeWorld Education Group, a language institute specializing in Japanese training in China.
 - In April 2007 Kaplan, Inc., a global education company, formed a joint venture with ACE Education, a leading educational services provider in China. The new venture, Kaplan ACE, provides preparation courses for matriculation in universities, along with degree and professional training programs at campuses throughout China.

Globalization, cont'd

– Middle East:

- Significant government sponsorship of Western institutions of higher education, including Education City in Qatar (branch campuses of Cornell Weill Medical School and Virginia Commonwealth, Texas A&M, Carnegie Mellon University, Georgetown and Northwestern Universities) and NYU branch campus in Abu Dhabi
- Creation of major graduate research institutions such as Masdar Institute of Science and Technology in Abu Dhabi and King Abdullah University of Science and Technology in Saudi Arabia.

– Africa

- International Finance Corporation is investing \$2.5 million in Ghana's Ashesi University College, a liberal arts college offering courses in computer science, management information systems, and business administration.

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