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**The Rise of the Two Year and Community College Systems:
Challenges and Opportunities in Times of Transition**

Session Panelists

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FEDERAL REGULATIONS AND MANDATES

Discussion Leader - Mary Hill

1. Provide an overview regarding the significance of the subject area.

Institutions of higher education are struggling to come into compliance with the many new guidelines and regulations. Community colleges are now, more than ever, held accountable for Federal Regulations and Mandates.

- Agencies – Who Regulates the Mandate
- Regulations – Briefly Define
- History and Purpose of Regulations
- Sanctions if not in Compliance:

Keeping up with the many regulations, proposed rules and pending deadlines can be overwhelming, and confusing for the community college administrator if they do not fully understand the regulations, how to implement, apply the requirements and keep updated with the changes.

2. Identify how Federal Regulations and Mandates have a distinct impact on community colleges. The overall health, safety and well being of community college students and community is crucial to interpretation, enforcement and reporting of the regulations.

- Limited attention from federal agencies to educate community colleges on regulations
- Expensive to regulate – May need special department to regulate
- Lack of funds to employ personnel to enforce the regulations
- Lack of funds to employ personnel to prevent campus health issues such as personal counselors
- Lack of Administration support
- Regulations require a reporting system from each department
- Vulnerable for litigation for noncompliance of federal regulations and mandates
- Environmental management will have impact on changing campus and community social culture and will prevent problems.

The interpretations, enforcement and reporting of the regulations will mean that community colleges must change some of the policies, procedures and practices concerning their students, faculty members, professional staff and community members.

3. Describe trends and programmatic implications going forward relevant to the subject area. Navigating federal regulations can be a tremendous task for student affairs administrators, law enforcement, judicial/student conduct affairs officers, residence life, risk management, health and counseling centers and community agencies. Some of the trending issues for 2012 will be:

- Increased student enrollment with diverse population
- Decrease in funding
- Veterans returning with alcohol, other drug and mental issues
- College dropouts due to: academically unprepared, alcohol, other drug, mental/stress issues, and other health and safety issues.

Summary: The federal regulations in higher education are continually changing. New and revised federal legislation and mandates require community colleges to periodically review and revise institutional policies to support student health and safety. In order to reduce liability risks, it is mandatory to have guidelines in place that support and protect the college and community members.

Federal Regulations and Mandates (Presently the “hot button” issues)

Drug-Free Schools and Communities Act (DFSCA) -U.S. Department of Education (USDE)

The Jeanne Clery Act - USDE

Family Educational Rights and Privacy Act (FERPA) – USDE

The Higher Education Opportunity Act of 2008 – USDE

Title IX of Education Amendments of 1972 - USDE

Athletics and Auxiliaries - USDE

Federal Student Aid – USDE

Higher Education –American with Disabilities Act – Section 508- USDE

Office of Civil Rights www.ada.gov

American Disabilities Act of 2008 (ADAAA) U.S. Department of Justice and USDE

Employment and Issues related to the State of the Economy

Discussion Leader - Edwin Ramos, Esq.

I. Introduction

In this subject area our main objective is to identify issues relating to employment and the state of economy that create challenges for Two Year Colleges and Community Colleges, and related federal action that impacts these institutions.

The views expressed herein are from the perspective of a community college president at a junior college in Puerto Rico. As a general matter, the main issues and challenges are the same as in the states, but there are also some issues that have to be seen from a different perspective due to our peculiar circumstances.

It is important to clarify that Puerto Rico is not a State within the union, but a Commonwealth but that our students, as a result of our political relationship with the United States, are recipients of federal financial aid such as Pell Grants, etc. and are subject to the federal laws and regulations. Also, it is important to point out that the Puerto Rican economy relies greatly on what's going on with the economy in the states and our employment situation may indeed be more depressed than that in the states. While as of November 2011 the unemployment rate in the United States was 8.6%, in the Island it was 16.1% and the economic situation was worst than in the United States.

II. Overview regarding the significance of the subject area

Institutions of higher education are struggling to survive in a moment where the unemployment rates are really high, where there is a very distressed economy that affects both the students and institutions, where there are many individuals that are looking for a change in careers and are looking for fast track education, where they are highly dependent on federal funds and where those who finish their education are fighting for a job so that they can pay their student loans.

While students are facing many challenges, federal government regulations are affecting community college institutions significantly. The federal mandates include new gainful employment regulations, more disclosure requirements, more requirements as to in job placement, retention, graduation rates, and more regulations on loan procedures in a moment of great unemployment scenario and an economic crisis.

At this time in history it is very important for us in the academic and legal world to point out the hot issues that institutions are facing in the two year and community college institutions and to look for solutions and ideas that could serve as a guide to face the challenges we have in front of us.

Two year colleges and community colleges have to face these issues. Some of the more important issues are the following:

1. Flood in attendance due to unemployment that may cause open door policy institutions to consider caps in enrollment.

In our school the increased enrollment tendency due to unemployment has resulted in the need for new buildings and facilities, new faculty, create new courses, and due to that expenses and utilities have increased beyond what we had budgeted.

The questions here are: Do we reject those incoming students that as result of the unemployment and economic crisis want and need to study? Shall we close the door?

Institutions shall make that decision on an individual basis and when faced with that challenge. This tendency goes with the axiom that says that in times of economic crisis, people tend to go to school and enrollments increase.

In some schools, as in our school, distance education is being used to accommodate as many students as possible in order to face this challenge.

2. Rise in college tuitions due to high spending per student as a result of the current economic impact downturn and existing economy trends.

As operating expenses grow for institutions one solution is to raise tuition. Two year colleges and community colleges are forced into considering raising tuitions. Are tuition

increases a solution to the economic challenges in our schools? Many say yes, many say no, but students, what do they say? What the federal government viewpoint?

“Persistently rising college tuitions, high spending per student, and mounting student debt burdens have reemerged as key issues in Washington”, public policy consultant Arthur M. Hauptman wrote in Inside Higher Education.

Secretary of Education, Arnie Duncan, has called on college and university officials to show more urgency in keeping down their prices and spending. The House Subcommittee in Post-Secondary Education has held another hearing to wring its hand about college affordability concerns and President Obama recently summoned a select group of college presidents to the White House to consider what can be done.

3. **Institutional Disclosures**, under the Higher Education Act of 1965 as amended by the Higher Education Opportunity Act of 2008, many disclosure and reporting requirements. We’ll focus on those related to employment and those related to the economy.

A disclosure requirement is information that an institution of higher education is required to distribute or make available to another party, such as students or employees. A reporting requirement is information submitted to the US Department of Education or other governmental agencies. These are required so that students can make informed decisions about post secondary education. These requirements pose new challenges to our two year and community colleges due to the state of the economy and the investment needed to comply with these exigencies. Is that a great challenge?

- a. Price of Attendance- this requirement shall be made available through appropriate publications, mailings, and electronic media. This information includes tuition and fees, books, and supplies, room and board, transportation costs and any additional costs for a program in which the student is enrolled or has expressed an interest. HEA Sec. 485 (a) (1)-(2)

In times of economic distress the federal government requires transparency from institutions in relation to price so that there are no hidden costs behind the

information they give to students. Institutions must be very aware of the compliance with this requirement. Will this requirement prevent the institutions from raising their cost attendance?

b. Net Price Calculator- This disclosure requirement is related to the previous one, Price of Attendance. This tool shall be made publicly available in the institution's website. You can create your own or as we did in our college use the one provided by the federal government. This is also a transparency requirement. In our own culture in Puerto Rico I don't think they will be using this tool. Do you think they will use it in the United States?

HEOA Sec. 111 amended HEA Title I, Part C: Added HEA Sec. 132 (a), Sec, 132 (b)

c. Entrance Counseling for Student Loan Borrowers- the information shall be provided to each borrower.

HEOA Sec. 488 (g) amended HEA Sec. 485

This requirement is a consequence of the high student loan default ratio due to unemployment and the state of the economy in the United States. In Puerto Rico there is also a high default ratio. Will this requirement help to prevent default in loans?

This requirement imposes an obligation on the institution to provide student orientation on a variety of loan related topics, such as:

- The kind of loan
- What's a promissory note
- Importance of repayment
- Interests to be paid
- Importance of the full time enrollment
- Sample repayment
- Consequences of default

d. Exit Counseling for Student Loan Borrowers- This information shall be given to each borrower.

HEOA Sec. 488 (b) amended HEA Sec. 485 (b)

This information is given to the borrowers of loans under FFEL, Federal Direct Loan or Perkins Loan Programs, shortly before the student ceases at least half time study at the institution.

Information is provided on:

- Repayment
- Repayment plans
- Debt management
- Importance of repayment
- Forbearance
- Consequences of default
- Loan consolidation
- Others...

e. Placement in Employment- This information shall be made available through appropriate publications, mailings or electronic media.

HEOA sec. 488 (a) (1) (E) amended HEA Sec. 485 (a) (1)

This regulation related to employment has gained more relevance now with the new gainful employment regulation we will analyze later on. The Federal Government is challenging institutions to publish the employment percentage of their programs so that students can take that into consideration when deciding which school to attend. Also it adds to that challenge that the institutions have to review their curricula programs to ensure that students acquire the skills needed for job placement and also when creating new programs to be sure that the students are in the best to find employment upon graduation. Will this help the students that come out to two year colleges or community colleges? Will this be an additional burden to institutions?

This information will give the student the placement statistics, types of employment obtained and placement by programs of degree or certification programs. Institutions must identify the source of the placement information and any timeframes and methodology associated with it. Will it be worth the effort?

f. Job Placement Rates-This disclosure requirement asks for this information to be made available to prospective students. HEA Sec. 487 (a) (8)

This requirement is directed to those institutions that advertise job placement rates as a means of recruiting students to enroll. They must make available to prospective students, at or before the time the prospective student applies for enrollment:

- The most recent available data concerning employment statistics and graduation statistics.
- Any other information necessary to substantiate the truthfulness of the advertisements.
- Relevant state licensing requirements of the state in which the institution is located for any job for which course of instruction is designed to prepare students.

Our institution advertises job placement as a means of recruiting as do most two year colleges in Puerto Rico. In the case of community colleges if they advertise job placement they have to comply with this requirement. Is this another consequence of unemployment, economic crisis and misrepresentation?

Today most students go to college so that they can get a well paid job. In 2009 the median household income in the United States was \$50,221. The State with the highest median household income was Maryland at \$69,272. In Puerto Rico the median household income is around \$36,500. Students are aware that to secure a good job they must go to college and two year and community colleges are viewed as a viable avenue to reach their goals.

A cursory examination of what subjects student choose to study show that higher education today is primarily job-oriented which is why the federal government

requires institutions to provide information about their graduate's success in careers and further education.

4. **Administrative costs on college campuses due to the growing demands of government regulation.** This challenge is due to the soaring costs in college campuses in recent years that have led to a rise in student tuition and fees.

An article in "Inside Higher Education" (January 2010) by Diane Auer Jones suggests that institutions should add a line to their tuition bills called the Federal Regulatory Compliance Fee, so that parents and students as well as politicians know how much regulations cost them.

In our institution recently we lived this experience with the Gainful Employment Regulation. In order to comply in time we had to pay a lot of overtime for work done after hours and in the weekends. This money was not considered in our yearly budget. From anecdotal information received, a two year institution in Puerto Rico that we know of had to hire an outside company to work with their compliance for gainful employment regulation and it was very expensive for them. In this case are the institutions justified in raising their cost of attendance to cover these new expenditures?

This burden flows from the growing requirements in federal regulations.

5. **Gainful Employment Regulation**

<http://ifap.ed.gov/gainfulemploymentinfo/>

This is a relevant topic of intense interest in higher education community policy making circles, and also of potential great impact on two year and community colleges which enroll students in programs of gainful employment. These regulations became effective on July 1, 2011.

Definition: An educational program is Title IV eligible only if the program:

- Is offered by a public or non-profit institution, leads to a degree, or
- Is offered by any institution, "leads to gainful employment in a recognized occupation"

With exceptions, all programs at private institutions are GE programs. In public institutions and not for profit all are GE programs with 3 exceptions. The law identifies programs not included:

- One identified by a Standard Occupational Classification (SOC) code established by OMB
- One identified by an Occupational Network established by the US Department of Labor
- One determined by the Secretary of Education in consultation with the Secretary of Labor.

For each GE program, the institution must disclose specific information to help prospective students choose different GE programs. Institutions have to disclose information on each GE Program's website home page.

Disclosure must be simple and meaningful, contain direct links from any other webpage with general, academic or admission information about the program. The information must be in open format that can be retained, downloaded, indexed and searched by commonly used web search application. Institutions have to disclose for each GE program, the occupation (by name and SOC code), program costs, placement rate, on time completion rate and median loan debts.

In the event an institution seeks to add a new GE program, the U.S. Education Department must be notified at least 90 days before the first day of class and must await approval. If the institution provides the required notice at least 90 days before the first day of class, it need not wait for approval unless otherwise required.

The final rules relating to GE were published on June 13, 2011 and defined a gainful employment program to be one where substantial member of the program's students are repaying their Title IV loans according to a fixed repayment rate and have a reasonable debt to earnings ratio. They have specific metrics for that.

Programs must have a rate of at least 35% repayment rate and a Debt to Earnings rate less than 12% of total earnings and 30% of discretionary income otherwise they fail. If a program fails three out of four years the educational program loses eligibility for Federal Student Aid.

What challenges do these regulations pose to two year and community colleges?

From our perspective this GE regulation that springs directly from the state of the economy where individuals who are mainly graduates of two year and community colleges are out of work, working part-time or if they are working can't pay their student loans because they have other needs, and are putting their former institutions in jeopardy of losing their Title IV funds because of reasons out of their control. The institutions that had open door policies shall be more selective because they might suffer in the long run if the student doesn't graduate or they don't get a "gainful employment".

Institutions can't guarantee without failing into misrepresentation that anyone is going to find "gainful employment" by just having the program been labeled as "gainful" by the federal government.

Before this regulation, due to the state of the economy in the United States and Puerto Rico, it was difficult for two year colleges and community colleges to comply with the 70% placement rate required. Now it is even more difficult since students not only have to find an employment, but it has to be a "gainful employment".

Just looking at the official statistics where the unemployment rate in the United States recently was disclosed at 8.6% and in Puerto Rico at 16.1%, how can institutions deal with the challenge of preparing students for a gainful employment job when there are no jobs available? The status of affairs for this challenge is worse in Puerto Rico than in the United States and we are been measured with the same metrics. From our point of view that is unfair.

Adding to our position the 16.1% unemployment rate that the government admits is not the real one. Economists not retained by the government admit that the real unemployment rate is 36% in the Island.

Two year colleges and community colleges will have to deal with this challenge that put them in a very difficult position to comply with Title IV regulation that allows them to receive federal funds. This same scenario that we have in Puerto Rico is the scenario in the small and the poorest states in the mainland so the federal government shall be very careful with the enforcement of this regulation across the board.

We are aware of the federal government concern about the increasing amount of Title IV aid that has been awarded to students that is nearing the \$14 billion annually. Congress and the United States Department of Education are seeking greater institutional accountability, which is evidence that investments in higher education are worth it (ROI) and better consumer protection against fraud.

But we also think that in this historic moment with the prevailing unemployment and the state of the economy it is not the right moment to adopt these measures and pose these challenges to all institutions across the board nationwide and for Puerto Rican institutions. The challenges could endanger a lot of two year colleges and community colleges, as well as the for profit institutions.

Let's think about that and look for some answers to the questions raised here to face the challenges.