



NACAC 2010 NATIONAL CONFERENCE

## **D407: New Regulatory Guidance on College Admission Activities**

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# New Regulatory Guidance on College Admission Activities

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## Agenda

A Bit of History

2009-10 Regulatory Process

Proposed Regulations



# New Regulatory Guidance on College Admission Activities

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## A Bit of History

NACAC's *Statement of Principles of Good Practice*

For more than two decades, members:

“will not offer or accept any reward or remuneration from a college, university, agency, or organization for placement or recruitment of students. Members will be compensated in the form of a fixed salary, rather than commissions or bonuses based on the number of students recruited.” (Section I.A.3.)



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## A Bit of History

1992 Higher Education Act

Statutory ban on incentive compensation states:

“[An] institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in ensuring enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive federal student assistance.” (20 USC §1094(a)(20))





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## A Bit of History

### 2002 U.S. Department of Education Regulations

#### 12 Safe Harbors, permissible practices:

- 1) Salary adjustments not based solely on numbers
- 2) Compensation for enrollment in non-aid-eligible programs
- 3) Compensation for contracts with employers for training
- 4) Profit-sharing bonuses
- 5) Compensation for program completion
- 6) Compensation for pre-enrollment activities
- 7) Compensation to managers
- 8) Awarding token gifts to students and alumni
- 9) Profit distributions
- 10) Compensation for internet-based activities
- 11) Compensation to third parties for non-recruitment activities
- 12) Compensation to third parties for recruitment activities



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## A Bit of History

Since 2002

Widespread disregard for Higher Education Act ban on incentive compensation, putting students and taxpayers at risk:

- Admission representatives
  - Using high-pressure sales tactics
  - Providing misleading information about programs, costs and aid, and job prospects
- Institutions
  - Setting quotas for admission recruiters
  - Using high-pressure strategies on recruiters



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## 2009-10 Regulatory Process

U.S. Department of Education Negotiated Rulemaking

Summer 2009 – Department accepts public comment on issues of concern

September 2009 – Department announced 14 issues for negotiated rulemaking

October 2009 – NACAC's David Hawkins is selected for Neg Reg committee

November 2009 - January 2010 – Three, week-long Neg Reg sessions

June 2010 – Proposed Regulations Issued for 45-day comment period

August 2010 – NACAC, 14 affiliates, and two GRC members comment

November 2010 – Department issues Final Rules

July 2011 – Final Rules take effect



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### HIGHER EDUCATION

## Negotiated Rulemaking for Higher Education 2009-10 - Team I—Program Integrity Issues

**new** [Conference Call on Gainful Employment](#)

On July 26, 2010, the Department published in the Federal Register a [Notice of Proposed Rulemaking \(NPRM\)](#). Through this NPRM, the Secretary proposes to amend the Student Assistance General Provisions to establish measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which these educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA).  
- [Press Release](#)  
- [Analysis, Additional Data](#)

On June 18, 2010, the Department published in the Federal Register a [Notice of Proposed Rulemaking \(NPRM\)](#). Through this NPRM, the Secretary proposes to improve integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs.  
- [Press Release](#)

List of Negotiators: [MS Word \(44K\)](#) | [PDF \(24K\)](#)

### How Do I Find...?

- Grant opportunities
- Money for college
- Research, best practices
- Facts and figures
- Accreditation
- More

### ED Recovery Act

[LEARN MORE](#)

### Related Topics

- Office of Federal Student Aid
- Office of Postsecondary Education



## Program Integrity

NACAC participates in advocacy efforts to preserve the integrity of the Higher Education Act's Title IV federal student aid programs. Through public policy, legislative action, regulatory input, and partnerships with allied-groups, NACAC aims to promote ethical admission practices and reduce the potential for waste, fraud, and abuse. Of 14 program integrity issues reviewed by the U.S. Department of Education through negotiated rulemaking in 2009-10, of most interest to NACAC members are incentive compensation, definition of a high school diploma, misrepresentation, and gainful employment.

### Resources

[NACAC Proposed Regulations Fact Sheet](#)

[NACAC Comments to U.S. Department of Education on Proposed Regulations](#)

[NACAC Statement of Principles of Good Practice](#)

[NACAC Higher Education Act Fraud Alert](#)

[NACAC's David Hawkins' Testimony to Senate HELP Committee](#)

[NACAC Testimony to U.S. Department of Education on Incentive Compensation](#)

[NACAC Incentive Compensation Issue Brief](#)

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## 2009-10 Regulatory Process

### Perspectives

#### Supporters

- Protect students
- Protect taxpayer dollars

#### Opponents

- Market choice
- Buyer beware
- What problem?
- Non-profit schools do it too



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## Proposed Regulations

What are they?

Proposals for improving the integrity of Title IV federal student aid programs authorized by the Higher Education Act of 1965

Issues affecting college admission professionals:

- Incentive compensation
- Misrepresentation of information to prospective students
- Definition of high school diploma
- Ability to benefit
- Gainful employment



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## Proposed Regulations

Incentive compensation

The Department 's position:

- Aggressive recruiting practices have resulted in students being encouraged to take out loans they could not afford, or enroll in programs where they were either unqualified or could not succeed.
- Though current laws prohibit schools from compensating admissions recruiters based on success in securing student enrollment, “safe harbors” allowed this practice to go on under certain circumstances, which the Department believes violate the spirit of the law.
- The proposed regulations will remove all the “safe harbors” provisions.





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## Proposed Regulations

### Incentive compensation

The Department 's new proposed rules align more closely with statutory language and includes definitions of language:

- Commission, bonus, or other incentive payment: “sum of money or something of value paid or given to a person or entity for services rendered.”
- Securing enrollments or the awards of financial aid: “activities that a person or entity engages in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.”
- Enrollment: “the admission or matriculation of a student into an eligible institution.”



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## Proposed Regulations

### Incentive compensation

The Department believes that institutions can determine if compensation is permissible by analyzing:

- 1) **Whether it is a commission, bonus, or other incentive payment**, defined as an award or a sum of money or something of value paid to or given to a person or entity for services rendered; and
- 2) Whether the commission, bonus, or other incentive payment is **provided to any person based directly or indirectly upon success in securing enrollments or the award of financial aid**, which are defined as activities engaged in for the purpose of the admission or matriculation of students for any period of time or the award of financial aid.



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## Proposed Regulations

Incentive compensation

NACAC's analysis:

- Institutions must compensate staff and third parties involved in the admission process based on factors that do not include the number of students enrolled
- An institution could use a variety of standard evaluative factors as the basis for compensation increases
- Institutions would need to re-examine their practices to ensure they comply with new rules





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## Proposed Regulations

Misrepresentation of information to prospective students

NACAC's SPGP states, members will:

“Accurately represent and promote their schools, institutions or services by providing precise information about their academic majors and degree programs. Such information shall include a factual and accurate description of majors, minors, concentrations, and/or interdisciplinary offerings that apply toward the completion of the undergraduate degree” (section I.A.1.).





# New Regulatory Guidance on College Admission Activities

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## Proposed Regulations

Misrepresentation of information to prospective students

The Department's position:

- Numerous complaints from students who felt misled
  - what was and was not being offered
  - the way programs could be paid for
  - their job prospects upon completion
- Few students are aware that a college recruiter might employ the same tactics as a car salesperson
- Taking advantage of trust enables recruiters to exploit students' lack of awareness of the terms of the interaction



# New Regulatory Guidance on College Admission Activities

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## Proposed Regulations

Misrepresentation of information to prospective students

The Department's proposed rule:

- Defines misrepresentation as “any false, erroneous, or misleading statement made not only by the eligible institution, but also any false, erroneous, or misleading statement made by one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement.”
- Anyone making any statement in any form of communication (print, verbal or other means) that has the capacity, likelihood or tendency to deceive or confuse will be in violation of this regulation
- Substantial misrepresentations (via advertising, promotional materials, or in the marketing or sale of courses or programs) are prohibited



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## Proposed Regulations

Misrepresentation of information to prospective students

The Department's proposed rule requires clear and factual information about:

- Nature of educational programs, such as accreditation, program content, program termination, transferability of credits, and certification for practice in a field
- Nature of financial charges, such as costs and refund policies, availability and type of financial assistance, and rights in applying or rejecting any particular type of financial assistance
- Employability of graduates, such as future conditions, compensation, or employment opportunities; and requirements that are generally needed in the field





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## Proposed Regulations

Definition of high school diploma

The Department's position:

- Government Accountability Office (GAO) report indicated that student aid programs are susceptible to fraudulent credentials as unscrupulous institutions attempt to enroll students without adhering to federal rules
- Help institutions identify diplomas that may be suspect





# New Regulatory Guidance on College Admission Activities

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## Proposed Regulations

Definition of high school diploma

The Department's proposed rule :

- Postsecondary institutions and the Department will work together to identify diplomas in question
- Institutions required to develop and follow procedures for evaluation of the validity of a student's high school completion if the institution or the Department of Education has reason to believe that the high school diploma is not valid or was not obtained from an entity approved to provide secondary education.



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## Proposed Regulations

Definition of high school diploma

The Department's proposed rule :

- Department will establish and maintain a list of secondary schools
- Department will add two questions to the FAFSA:
  - 1) What is the name of the secondary school or entity that provided the student's secondary school program of study?
  - 2) What is the state that awarded the student's high school diploma?



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## Proposed Regulations

Ability to benefit

The Department's position:

- GAO investigation found abuses in test administration

The Department's proposed rule:

- Strengthens certification and decertification of administrators
- Test publishers take responsibility for integrity of administrators
- Test publishers must notify institutions and students of improper administration



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## Proposed Regulations

### Gainful employment

Applies to proprietary and postsecondary vocational institutions providing programs of training that prepare students for gainful employment in a recognized occupation (e.g. auto mechanics, cosmetology, culinary arts, and heavy equipment operation).

The Department's concern:

- High loan debt
- Low income





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## Proposed Regulations

### Gainful employment

The Department's proposed rule would require these institutions to disclose on their Web site:

- Occupations that its programs prepare students to enter, along with links to occupational profiles on O\*NET (U.S. Department of Labor)
- On-time graduations rate of students entering a program
- Cost of each program, including all fees
- Beginning no later than June 30, 2013, the placement rate for students completing each of those programs
- The median loan debt incurred by students who completed each program in the preceding three years



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## Proposed Regulations

### Gainful employment

The Department's proposed rule considers:

- 1) Whether former students are repaying their federal student loans
- 2) The relationship between total student loan debt and average earnings after a postsecondary training program

Defined by a two-part test:

- Measuring the relationship between the debt students incur and their incomes after program completion
- Measuring the rate at which all students, regardless of completion, repay their loans on time

## New Regulatory Guidance on College Admission Activities

### Questions about proposed rules and compliance?

**U.S. Department of Education's Negotiated Rulemaking page**  
[www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html)

**NACAC's Program Integrity page**  
[www.nacacnet.org/ProgramIntegrity](http://www.nacacnet.org/ProgramIntegrity)



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**Thank you!**

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