NAICU Summary Information

Incentive Compensation

Background: The ban on compensating student recruiters based on the numbers of students they enrolled became law in 1992, as one of several provisions aimed at stemming fraud and abuse in federal student aid programs. The purpose of the incentive compensation ban was to prevent schools' from hiring head-hunters whose only pay incentive was to sign up large numbers of students, regardless of their academic needs. In 2002, a dozen exceptions ("safe harbors") were added in regulation that largely gutted the statute's effectiveness.

Proposal: The department has proposed to do away with the safe harbors, reverting to the approximate regulatory status that existed from 1992-2002. The draft language restates the statute in the regulation, including that the restriction does not apply to the recruitment of foreign students. The proposal also: 1) adds several definitions; 2) clarifies that contractors to institutions may make merit-based adjustments to their own employees pay that are not linked to success in recruitment; 3) expands the types of student contact considered "recruitment activities"; and, 4) clarifies that the incentive compensation ban applies to higher level administrators, i.e., "all the way to the top."

Concerns: In general, NAICU is supportive of the department's effort to hold the line on incentive compensation. However, regulatory language needs to be reviewed, especially by any college that has used one of the existing safe harbors, to ensure that the regulations do not impinge on commonly used compensation structures and recruiting practices.

Additional Information:

Current Regulatory Citation (See Code of Federal Regulations http://www.gpoaccess.gov/cfr/index.html) Sec. 668.14(b) - *Incentive Compensation*

Department of Education
Proposed Regulations: Program Integrity Issues
Federal Register - June 18, 2010

Incentive Compensation

Preamble (Pages 34816-20)

Incentive compensation (§668.14(b))

Statute: Section 487(a)(20) of the HEA requires that the title IV, HEA program participation agreement prohibit an institution from making any commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. The statute states that this prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal financial assistance.

Current Regulations: Current §668.14(b)(22)(i) incorporates the prohibition and exception reflected in section 487(a)(20) of the HEA. It prohibits an institution from making any commission, bonus, or other incentive payments based directly or indirectly on success in securing enrollments or financial aid to any persons or entities involved in student recruiting or admissions activities, or in making decisions about the award of student financial assistance. It also states that this restriction does not apply to the recruitment of foreign students living in foreign countries who are not eligible to receive Federal student aid.

Current §668.14(b)(22)(ii) goes on to specify 12 "safe harbors"--12 activities and arrangements that an institution may carry out without violating the prohibition against incentive compensation reflected in section 487(a)(20) of the HEA and current §668.14(b)(22)(i). The first safe harbor explains the conditions under which an institution may adjust compensation without that compensation being considered an incentive payment. The 12 safe harbors describe the conditions under which payments that could potentially be construed as based upon securing enrollments or financial aid are nonetheless not prohibited under section 487(a)(20) of the HEA and current §668.14(b)(22)(i).

The payment or compensation plans covered by the safe harbors address the following subjects:

1. Adjustments to employee compensation (current §668.14(b)(22)(i)(A)). Under this safe harbor, an institution may make up to two adjustments (upward or downward) to a covered employee's annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or

awarded financial aid. This safe harbor also permits one cost-of-living increase that is paid to all or substantially all of the institution's full-time employees.

2. Enrollment in programs that are not eligible for title IV, HEA program funds (current §668.14(b)(22)(i)(B)). This safe harbor permits compensation to recruiters based upon enrollment of students who enroll in programs that are ineligible for title IV, HEA funds.

3. Contracts with employers to provide training (current §668.14(b)(22)(i)(C)). This safe harbor addresses payments to recruiters who arrange contracts between an institution and an employer, where the employer pays the tuition and fees for its employees (either directly to the institution or by reimbursement to the employee).

4. Profit-sharing bonus plans (current §668.14(b)(22)(i)(D)). Under this safe harbor, profit-sharing and bonus payments to all or substantially all of an institution's full-time employees are not considered incentive payments based on success in securing enrollments or awarding financial aid in violation of the prohibition in section 487(a)(20) of the HEA and current §668.14(b)(22)(i). As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the institution's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition.

5. Compensation based upon program completion (current §668.14(b)(22)(i)(E)). This safe harbor permits compensation based upon students successfully completing their educational programs or one academic year of their educational programs, whichever is shorter.

6. Pre-enrollment activities (current §668.14(b)(22)(i)(F)). This safe harbor states that clerical pre-enrollment activities, such as answering telephone calls, referring inquiries, or distributing institutional materials, are not considered recruitment or admission activities. Accordingly, under this safe harbor, an institution may make incentive payments to individuals whose responsibilities are limited to clerical pre-enrollment activities.

7. Managerial and supervisory employees (current §668.14(b)(22)(i)(G)). This safe harbor states that the incentive payment prohibition in section 487(a)(20) of the HEA and current §668.14(b)(22)(i) does not apply to managerial and supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

8. Token gifts (current §668.14(b)(22)(i)(H)). Under this safe harbor, an institution may provide a token gift not to exceed $100 to an alumnus or student provided that the gift is not in the form of money and no more than one gift is provided annually to an individual.

9. Profit distributions (current §668.14(b)(22)(i)(I)). This safe harbor states that profit distributions to owners of the institution are not payments based on success in securing

enrollments or awarding financial aid in violation of the prohibition in section 487(a)(20) of the HEA and current §668.14(b)(22)(i) as long as the distribution represents a proportionate share of the profits based upon the individual's ownership interest.

10. Internet-based activities (current §668.14(b)(22)(i)(J)). This safe harbor permits an institution to award incentive compensation for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission online.

11. Payments to third parties for non-recruitment activities (current 668.14(b)(22)(i)(K)). This safe harbor states that the incentive compensation prohibition does not apply to payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

12. Payments to third parties for recruitment activities (current §668.14(b)(22)(i)(L)). Under this safe harbor, if an institution uses an outside entity to perform activities for it, including recruitment or admission activities, the institution may make incentive payments to the third party without violating the incentive payment prohibition in section 487(a)(20) of the HEA and current §668.14(b)(22)(i) as long as the individuals performing the recruitment or admission activities are not compensated in a way that is prohibited by section 487(a)(20) of the HEA and current §668.14(b)(22)(i).

Proposed Regulations: The Department proposes to revise §668.14(b)(22) to align it more closely with the statutory language from section 487(a)(20) of the HEA. Specifically, proposed §668.14(b)(22)(i)(A) would restate the statutory provision in the HEA, which provides that to be eligible to participate in the Federal student financial aid programs authorized under title IV of the HEA, an institution must agree that it will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance. Proposed §668.14(b)(22)(i)(B) would provide that the incentive compensation prohibition does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. The Department would delete the 12 safe harbors reflected in current §668.14(b)(22)(ii). The Department would, however, clarify, in proposed §668.14(b)(22)(ii), that eligible institutions and their contractors may make merit-based adjustments to employee compensation, provided that such adjustments are not based directly or indirectly upon success in securing enrollments or the award of financial aid.

Finally, in proposed §668.14(b)(22)(iii), the Department would define the following key terms that would be used in proposed §668.14(b)(22): commission, bonus, or other incentive payment, securing enrollments or the awards of financial aid, and enrollment.

Proposed §668.14(b)(22)(iii)(A) would define commission, bonus, or other incentive payment as a sum of money or something of value paid or given to a person or entity for services rendered.

Proposed §668.14(b)(22)(iii)(B) would define securing enrollments or the awards of financial aid as 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. Proposed §668.14(b)(22)(iii)(B)(1) and (b)(22)(iii)(B)(2) would clarify that the term securing enrollments or the awards of financial aid includes recruitment contact in any form and excludes making a payment to a third party for student contact information for prospective students, respectively.
Proposed §668.14(b)(22)(iii)(C) would define enrollment as the admission or matriculation of a student into an eligible institution.

Reasons: Consistent with comments made by a majority of the non-Federal negotiators, the Department believes that the language in section 487(a)(20) of the HEA is clear, and that the elimination of all of the regulatory safe harbors reflected in current §668.14(b)(22)(ii) would best serve to effectuate congressional intent. The Department previously explained that it was adopting the safe harbors based on a “purposive reading of section 487(a)(20) of the HEA.” 67 FR 51723 (August 8, 2002). Since that time, however, the Department’s experience demonstrates that unscrupulous actors routinely rely upon these safe harbors to circumvent the intent of section 487(a)(20) of the HEA. As such, rather than serving to effectuate the goals intended by Congress through its adoption of section 487(a)(20) of the HEA, the safe harbors have served to obstruct those objectives. For example, the first safe harbor, which prohibits the payment of incentives based solely upon success in securing enrollments, has led institutions to establish, on paper, other factors that are purportedly used to evaluate student recruiters other than the sheer numbers of students enrolled. However, in practice, consideration of these factors has been minimal at best, or otherwise indiscernible. This has led the Department to expend vast resources evaluating the legitimacy of institutional compensation plans, and considerable time and effort has been lost by both the Department and institutions engaged in litigation. Moreover, the Department believes that students are frequently the victims of compensation plans that institutions have adopted within the ambit of the first safe harbor. When admissions personnel are compensated substantially, if not entirely, upon the numbers of students enrolled, the incentive to deceive or misrepresent the manner in which a particular educational program meets a student’s need increases substantially. As a result, the Department believes that the existence of the safe harbors is a major impediment to ensuring that students are enrolled in educational programs that are meaningful to them. There was considerable discussion on this proposed approach during the negotiated rulemaking sessions.

At the outset of the discussions on incentive compensation during negotiated rulemaking, the Department reviewed each of the 12 safe harbors reflected in the current regulations and stated why the Department views them as either inappropriate or unnecessary:

1. Adjustments to employee compensation. The Department explained that this safe harbor has led to allegations in which institutions concede that their compensation structures include consideration of the number of enrolled students, but aver that they are not *solely* based upon such numbers. In some of these instances, the substantial weight of the evidence has suggested that the other factors purportedly analyzed are not truly considered, and that, in reality, the institution bases salaries exclusively upon the number of students enrolled. For this reason, the Department proposes to delete this safe harbor. After careful consideration, the Department has determined that removal of the safe harbor is preferable to trying to revise the safe harbor. For example, changing the word *solely* in this safe harbor to some other modifier, such as "primarily" or "substantially," would not correct the problem, as the evaluation of any alternative arrangement would merely shift to whether the compensation was "primarily" or "substantially" based upon enrollments.

2. Compensation related to enrollment in programs that are not eligible for title IV, HEA program funds. Section 487(a)(20) of the HEA provides that compensation may not be based upon success in securing enrollments whether the students receive title IV, HEA funds, or some other form of student financial assistance. This safe harbor provides an impetus to steer students away from title IV, HEA programs. The potential also exists for manipulation, as students who were initially enrolled in non-title IV, HEA eligible programs may then be re-enrolled in title IV, HEA eligible programs. As a result, the Department proposes to remove this safe harbor.

3. Compensation related to contracts with employers to provide training. Compensation permitted under this safe harbor includes compensation that is ultimately based upon success in securing enrollments, and is thus inconsistent with section 487(a)(20) of the HEA.

4. Compensation related to profit-sharing bonus plans. There is no statutory proscription upon offering employees either profit-sharing or a bonus; however, if either is based upon success in securing enrollments, it is not permitted. Therefore, this safe harbor is unnecessary.

5. Compensation based on program completion. The Department believes that this safe harbor permits compensation that is "indirectly" based upon securing enrollments-- that is, unless the student enrolls, the student cannot successfully complete an educational program. With the proliferation of short-time, accelerated programs, the potential exists for shorter and shorter programs, and increased efforts to rely upon this safe harbor to incentivize recruiters. Moreover, this safe harbor may lead to lowered or misrepresented admissions standards and program offerings, lowered academic progress standards, altered attendance records, and a lack of meaningful emphasis on retention. The Department has seen schools that have devised and operated grading policies that all but ensure that students who enroll will graduate, regardless of their academic performance. For these reasons, the Department believes it is appropriate to delete this safe harbor.

6. Compensation related to pre-enrollment activities. The Department does not believe that this safe harbor is appropriate. Individuals may not receive incentive compensation based on their success in soliciting students for interviews; soliciting students for interviews is a recruitment activity, not a pre-enrollment activity. In addition, because a recruiter's job description is to recruit, it would be very difficult for an institution to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities. Such activities certainly contribute "indirectly," if not "directly," to the success in securing enrollments, and hence compensation based upon them is prohibited by the statute. Moreover, with the elimination of the safe harbor relating to adjustments to employee compensation, an unscrupulous actor could claim that the activities in which its recruiters engaged, and for which they were compensated, consisted of "clerical" or "pre-enrollment" activities, regardless of whether a student ultimately enrolled.

7. Compensation related to managerial and supervisory employees. The Department believes that this safe harbor provision is no longer appropriate because senior management may drive the organizational and operational culture at an institution, creating pressures for top, and even middle, management to secure increasing numbers of enrollments from their recruiters. As a result, these individuals should not be exempt from the ban on receiving incentive compensation.

8. Compensation related to token gifts. As at least one non-Federal negotiator noted, students oft-times do things with little reflection if it brings an immediate reward, and such things as a $100 gift card constitute a substantial incentive for many students. Further, the fair market value of an item might be considerably greater than its cost. A high value item for which the institution paid a minimal cost could not be considered a token gift. As a result, even the provision of token gifts to students and alumni is fraught with the potential for abuse, creating the need to remove this safe harbor, as well.

9. Compensation based on profit distributions that are based on an individual's ownership interest. Section 487(a)(20) of the HEA prohibits compensation, including profit distributions, that is based upon success in securing enrollments and the award of financial aid. It does not prohibit profit distributions based upon an individual's ownership interest. As a result, it is the Department's view that this safe harbor is unnecessary.

10. Compensation related to Internet-based activities. Technological advancements and developments in Internet-based activities since this safe harbor was adopted, and the frequency with which such activities are now relied upon, argue against the continued provision of this safe harbor. Moreover, with the elimination of the first safe harbor, it can be anticipated that an institution seeking to avoid compliance with section 487(a)(20) of the HEA will maximize its Internet-based recruitment activities. For this reason, the Department proposes to remove this safe harbor.

11. Compensation to third parties for non-recruitment activities. The Department believes that this safe harbor is no longer necessary. Proposed §668.14(b)(22) states that a person

or entity who is engaged in any student recruitment or admission activity, or in making decisions
regarding the awarding of title IV, HEA program funds may not be compensated directly or indirectly based upon the success in securing enrollments. Thus, there is no reason to provide any discussion of third-party activities as they relate to non-recruitment activities as a potential safe harbor.

12. Compensation to third parties for recruitment activities. This safe harbor expands the scope of the eleventh safe harbor to include "recruiting or admission activities," while providing the caveat that the compensation cannot be offered in an otherwise legally impermissible manner. As mentioned in regard to the eleventh safe harbor, section 487(a)(20) of the HEA expressly proscribes payments to "any persons or entities" based directly or indirectly on success in securing enrollments, so any further discussion of third party activities as they relate to recruitment activities is also unnecessary.

The Department believes that removal of these regulatory safe harbors is necessary to ensure that section 487(a)(20) of the HEA is properly applied. The Department has determined that these safe harbors do substantially more harm than good, and believes that institutions should not look to safe harbors to determine whether a payment complies with section 487(a)(20) of the HEA. Rather, the Department believes that institutions can readily determine if a payment or compensation is permissible under section 487(a)(20) of the HEA by analyzing—

(1) Whether it is a commission, bonus, or other incentive payment, defined as an award of 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.

If the answer to each of these questions is yes, the commission, bonus, or incentive payment would not be permitted under the statute. Therefore, the Department proposes to simplify its regulations to better align them with section 487(a)(20) of the HEA.

Most non-Federal negotiators favored the Department's proposal to remove the current safe harbors because they believe that the regulatory safe harbors have led to inappropriate incentive compensation practices by institutions that are prohibited by the HEA. The majority of the non-Federal negotiators indicated strong support for the removal of these safe harbors, believing that doing so would more accurately reflect congressional intent and protect students from abusive recruitment practices that have directly resulted when institutions have sought to circumvent, if not directly flaunt, section 487(a)(20) of the HEA.

The non-Federal negotiator who opposed the Department's proposed removal of the safe harbors and their replacement with certain definitions argued that the safe harbors are needed to explain the scope of the prohibition in section 487(a)(20) of the HEA, which was perceived as being unclear. Without the safe harbors, it was argued, institutions would not have a clear sense of what practices are permitted and, therefore, would be more likely to unintentionally violate the prohibition in section 487(a)(20) of the HEA and §668.14(b)(22). However, any merit to this argument is belied by the ease of the application of the two-part test the Department has offered that will demonstrate whether a compensation plan or payment complies with the statute and its implementing regulations.

A sub-caucus of non-Federal negotiators worked between the second session of negotiated rulemaking and the third session of negotiated rulemaking to develop draft regulatory language that would retain, but narrow the scope of, the safe harbors in the current regulations. There was much discussion regarding the sub-caucus' proposed draft language, as well as one final counter-proposal brought to the negotiating table.
A number of specific concerns were raised during these discussions. First and foremost, negotiators wanted to understand what the likely impact would be if the safe harbors were removed from the regulations. They questioned whether all previously permitted actions would now be prohibited. The Department explained its position: That, going forward, under the proposed regulations, institutions would need to re-examine their practices to ensure that they comply with proposed §668.14(b)(22). To the extent that a safe harbor created an exception to the statutory prohibition found in section 487(a)(20) of the HEA, its removal would establish that such an exception no longer exists, and that the action that had been permitted is now prohibited.

Several negotiators were concerned that under the Department's proposal, institutions would be prohibited from paying merit-based increases to their financial aid or admissions personnel. In particular, some negotiators supported the inclusion of language that would permit an institution to make merit-based adjustments based on an employee's performance in relation to an institution's goals, such as those for enrollment, completion, or graduation.

The Department's proposed regulations continue to authorize merit-based compensation for financial aid or admissions staff. An institution could use a variety of standard evaluative factors as the basis for such an increase; however, consistent with section 487(a)(20) of the HEA, under proposed §668.14(b)(22), it would not be permitted to consider the employee's success in securing student enrollments or the award of financial aid or institutional goals based on that success among those factors. Further, an increase that is based either directly or indirectly on individual student numbers would be prohibited. The Department believes that the language in proposed §668.14(b)(22)(ii) makes this clear.

One negotiator felt strongly that it was critical to use the word "solely," or some other modifier, to limit the prohibition in proposed §668.14(b)(22)(i) (i.e., "It will not provide any commission, bonus, or other incentive payment based solely upon success…" rather than "It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success"). This negotiator said that the use of the word solely, or some other modifier, would be consistent with the use of that term solely in the first safe harbor reflected in current §668.14(b)(22)(ii)(A) (i.e., "…is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid"). As discussed earlier in this preamble, given the Department's experience with how the first safe harbor in current §668.14(b)(22) has been abused, the Department does not believe that such a construction is warranted. It is the Department's view that, consistent with section 487(a)(20) of the HEA, incentive payments should not be based in any part, directly or indirectly, on success in securing enrollments or the awards of financial aid.

In addition, some negotiators advocated for an institution's ability to pay bonuses on the basis of students who complete their programs of instruction, as currently provided for in the fifth safe harbor. They believed that this category of students (i.e., students who complete their programs), is different from the category of students who enroll, for which compensation may not based.

The Department does not agree. As previously stated, the Department believes that the regulations must clearly reinforce the statutory provision and exclude the possibility of basing any portion of a bonus on success in securing student enrollments or financial aid awards.

Several negotiators requested that the Department define the term "bonus" as a way to help institutions understand what types of compensation are appropriate. Accordingly, in proposed §668.14(b)(22)(iii)(A), the Department proposes to define the term commission, bonus, or other incentive payment as a sum of money or something of value paid to or given to a person or an entity for services rendered. Linked to the language in proposed §668.14(b)(22)(i)(A), this definition is unambiguous in prohibiting payment of any money or item of value on the basis of direct or indirect success in securing enrollments or the award of financial aid.

Several non-Federal negotiators asked for clarification about the extent to which supervisors and upper level administrators would be covered by proposed §668.14(b)(22). The Department's position is that section 487(a)(20) of the HEA is clear that the incentive compensation prohibition applies all the way to the top of an institution or organization. Therefore, individuals who are engaged in any student recruitment or admissions activity or in making decisions about the award of student financial aid are covered by this prohibition.

One negotiator asked the Department to clarify how the prohibition reflected in proposed §668.14(b)(22) would work in the case of an institution that partners with other institutions or organizations to receive shared services, an approach that some institutions are turning to for economic reasons. As an example, a group of institutions might share a centralized campus security team because doing so could be less expensive than having each institution set up its own team. If institutions use this model of shared services for financial aid purposes and the payment for the shared services is volume-driven (e.g., an institution is billed based on the number of student files that are processed), the negotiator asked if institutions would comply with proposed §668.14(b)(22). The

Department does not believe that the proposed language would automatically preclude an institution's use of this type of arrangement, provided that payment is not based on success in securing enrollments or the awards of financial aid. In the normal course, the contractor would be paid for services rendered without violating the proposed regulations.

Several negotiators were concerned about the impact of the proposed language on an institution's Internet-based activities. Negotiators asserted that the HEA permits advertising and marketing activities by a third party, as long as payment to the third party is based on those who "click" and is not based on the number of individuals who enroll. The Department agrees and does not believe that the proposed regulatory language would prohibit such click-through payments.

The issue of token gifts prompted some discussion. Several negotiators asked the Department to clarify whether an institution that offers some type of payment to current students in exchange for their contact list would violate proposed §668.14(b)(22). The Department believes that this type of activity is permitted as long as the student is not paid or given an item of value on the basis of the number of students who apply or enroll. Most negotiators agreed with this position.

Finally, several non-Federal negotiators asked whether the Department would offer private letter guidance on conduct that may violate proposed §668.14(b)(22). Accordingly, the Department believes the proposed language is clear and reflective of section 487(a)(20) of the HEA. The Department believes it will appropriately guide institutions as they evaluate compensation issues. To the extent that ongoing questions arise on a particular aspect of the regulations, the Department will respond appropriately. This response may include a clarification in a Department publication, such as the Federal Student Aid Handbook or a Dear Colleague Letter. The Department believes that rather than focusing clarifying guidance on the situation at a particular institution, any illuminating statements must be broadly applicable and distributed widely to all participating institutions. As a result, the Department does not intend to provide private guidance regarding particular compensation structures in the future and will enforce the law as written.

Negotiators did not reach agreement on this issue.

Regulatory Language (pages 34874)

16. Section 668.14 is amended by revising paragraph (b)(22) to read as follows:
§668.14 Program participation agreement.
* * * * *
(b) * * *

(22) (i)(A) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or the award of financial aid,

to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the awarding of title IV, HEA program funds.

(B) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(ii) Eligible institutions, organizations that are contractors to eligible institutions, and other entities may make merit-based adjustments to employee compensation provided that such adjustments are not based directly or indirectly upon success in securing enrollments or the award of financial aid.

(iii) As used in paragraph (b)(22) of this section,

(A) *Commission, bonus, or other incentive payment* means a sum of money or something of value paid to or given to a person or an entity for services rendered.

(B) *Securing enrollments or the awards of financial aid* means 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.

(1) These activities include recruitment contact in any form with a prospective student, such as preadmission or advising activities, scheduling an appointment to visit the enrollment office, attendance at such appointment, or signing an enrollment agreement or financial aid application.

(2) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on the number of students who apply or enroll.

(C) *Enrollment* means the admission or matriculation of a student into an eligible institution.