

INCENTIVE COMPENSATION (Sec. 668.14(b))

Several changes made to the NPRM.

Rationale for Regulation: Because of the continuing abuse of compensating admissions recruiters on a per-student basis - principally in the for-profit sector - the department has eliminated all twelve "safe harbors" related to incentive compensation.

Key Provisions of the Regulation:

- These regulations apply to all sectors *and all levels of a college's administration.*
- The regulations ban "any commission, bonus, or other incentive payment based, in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid." It allows other merit-based salary increases and payment of third parties on a volume basis, though not on the number of enrollees.
- Institutions would have to determine for themselves if the activity constitutes incentive compensation, by using a two-part test. 1. Is the payment a bonus or commission for services rendered? 2. Is it provided, based in any part, directly or indirectly, on securing enrollment or awarding financial aid?
- The definition of "success in securing enrollments or the award of financial aid" "does not include making a payment to a third party for the provision of student contact information" provided it is not based on additional conduct such as participation in preadmission or advertising activities. (Some questions have been raised about the extent of this provision and the department is expected to issue sub-regulatory guidance concerning the practice.)

Regulatory Language:

Section 668.14 is amended by revising paragraph (b)(22) to read as follows:

Sec. 668.14: Program participation agreement.

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(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based in any part, 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 award of title IV, HEA program funds. (A) 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. (B) For the purpose of paragraph (b)(22) of this section, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

(ii) Notwithstanding paragraph (b)(22)(i) of this section, eligible institutions,

organizations that are contractors to eligible institutions, and other entities may make--

(A) Merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; and

(B) Profit-sharing payments so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(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, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

(B) Securing enrollments or the award of financial aid means activities that a person or entity engages in at any point in time through completion of an educational program 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 contact in any form with a prospective student, such as, but not limited to--contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of 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--

(i) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student's enrollment agreement or financial aid application; or

(ii) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.

(C) Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid means--

(1) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards title IV, HEA program funds; and

(2) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds.

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