

MISREPRESENTATION OF INFORMATION TO STUDENTS AND PROSPECTIVE STUDENTS AND OTHERS (Subpart F - Secs. 668.71-668.75)

Several changes made to NPRM

Rationale for Regulation: The department was concerned that recruiting and advertising practices in the for-profit sector was misleading students.

Key Provisions of the Regulation:- The new regulatory language expands the number of persons, entities (the department and accrediting agencies), and types of information to which misrepresentation rules apply.

- The regulations also describe what constitutes substantial misrepresentation and what actions the Secretary can take in response to it.

- Several important changes from the NPRM language are listed below.

1. A revision was made to “Sec. 668.71(c) to clarify that the ban on misrepresentations for which an institution is responsible only extends to false, erroneous, or misleading statements about the institution that are made by an ineligible institution, organization, or persons with whom the institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.”
2. The department “revised Sec. 668.72(c) to prohibit false, erroneous, or misleading statements concerning whether completion of an education program qualifies a student for licensure or employment in the States in which the educational program is offered.”
3. The department “revised Sec. 668.72(n) to include a failure to disclose that the degree requires specialized accreditation as misrepresentation.”

Regulatory Language:

Subpart F of part 668 is revised to read as follows:

Subpart F - Misrepresentation

Sec. 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may--

- (1) Revoke the eligible institution's program participation agreement;
- (2) Impose limitations on the institution's participation in the title IV, HEA programs;
- (3) Deny participation applications made on behalf of the institution; or
- (4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation regarding the eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial

misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart: Misrepresentation: Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program. Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution. Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

Sec. 668.72 Nature of educational program.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning--

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student--

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take or to take the examination required to receive, a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by--

(1) Vocational counselors, high schools, colleges, educational organizations, employment

agencies, members of a particular industry, students, former students, or others; or

- (2) Governmental officials for governmental employment;
- (f) Its size, location, facilities, or equipment;
- (g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;
- (h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;
- (i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- (j) The availability of part-time employment or other forms of financial assistance;
- (k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;
- (l) The nature or extent of any prerequisites established for enrollment in any course;
- (m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;
- (n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or
- o) Any matters required to be disclosed to prospective students under Sec. Sec. 668.42 and 668.43 of this part.

Sec. 668.73 Nature of financial charges.

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning--

- (a) Offers of scholarships to pay all or part of a course charge;
- (b) Whether a particular charge is the customary charge at the institution for a course;
- (c) The cost of the program and the institution's refund policy if the student does not complete the program;
- (d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or
- (e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

Sec. 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning--

- (a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;
- (b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;
- (c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;
- (d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as ``Men/women wanted to train for * * *," ``Help Wanted," ``Employment," or ``Business Opportunities";
- (e) Government job market statistics in relation to the potential placement of its graduates; or
- (f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

Sec. 668.75 Relationship with the Department of Education.

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.