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## Industry Update

### Special edition overview

Final regulations on a collection of 14 topics intended to strengthen the integrity of the Title IV programs were published on October 29, 2010. These new rules primarily impact schools — both financial aid administrators and their colleagues with other campus administration responsibilities.

To help schools understand and prepare to implement these rules, TG is providing this special edition that includes a high-level summary of each topic and notes significant changes to the proposed rules published on June 18, 2010. Tips and tools are included to help schools navigate the new rules, and an update on Gainful Employment rules is also provided.

In addition to this special issue, TG will provide a series of *Shoptalk* articles this month focusing on each of the 14 topics individually and sharing other helpful information for schools.

## Register for TG's final rules webinars

On November 18-19, 2010, TG will offer a two-part webinar on Program Integrity final rules. Part 1 of the webinar is scheduled for 10 a.m.-11 a.m. Central Time, on November 18. Part 2 is scheduled for 3 p.m.-4 p.m. Central Time, on November 19.

To register for the TG's Program Integrity final rules webinars [Part 1](#) and [Part 2](#), visit *TG Online*.

## ED publishes final rules on Program Integrity Issues

On October 29, 2010, the Department of Education (ED) issued [final rules](#) on a group of topics known as "Program Integrity Issues". The final rules include a number of changes to the proposed rules published in a [Notice of Proposed Rulemaking](#) (NPRM) on June 18, 2010. The final rules reflect ED's judgment as to the best approach to take on the issues, based on negotiated rulemaking discussions and many public comments.

The final rules impact public, private nonprofit, and for-profit schools in a number of significant ways. It is important for all schools to carefully review the rules to determine if changes need to be made to institutional policies, procedures, and systems. All of the rules are effective July 1, 2011, except as noted below for changes in verification requirements.

## Summary of final rules provisions

### Gainful employment in a recognized occupation

*High-level summary:* Schools offering these programs (including non-degree programs at public and private nonprofit schools, and virtually all programs at for-profit schools) will report program-level data to ED and disclose program information online and in promotional materials. Program-level data to be reported to ED includes new enrollments and completions, and for completers, institutional financing and private education loan debt (if known) and information on whether students subsequently enrolled in higher level programs.

In a separate [October 29, 2010, Federal Register](#) notice, ED provides requirements for schools intending to add an educational program subject to the gainful employment rules.

*Significant changes to proposed rules:*

- ED provides further guidance on initial disclosure requirements, noting that a standardized disclosure form will be developed in the near future for schools to use for this purpose.

- Reporting requirements to ED in 2011 include data for award years 2006-2007 through 2009-10.
- Placement rate reporting begins in 2011 rather than 2013. Student placement rates are initially calculated in accordance with accrediting or state agency requirements, if any, until a standardized methodology is developed by the National Center for Education Statistics (NCES) and approved for inclusion in the Integrated Postsecondary Education Data System (IPEDS) reporting process.
- On-time completion rates for each program are computed based on all students who recently completed the program, rather than all students who began enrollment in the program.
- If students matriculate or transfer to higher credentialed programs, schools will report this also.
- A number of changes are made to requirements for obtaining approvals for new programs.

### **Definition of a "credit hour"**

*High-level summary:* If a school offers credit hour programs, the school is responsible for making appropriate assignments of credit hours in the programs, and the school's ED-recognized accrediting (or state) agency must evaluate the school's credit hour policy and application to ensure compliance with Title IV program rules. Clock-to-credit hour conversion formulas are revised, based on the definition of an "academic year", and circumstances in which a program must be measured in clock hours for Title IV purposes are specified.

*Significant changes to proposed rules:* None.

### **State authorization as a component of school eligibility**

*High-level summary:* Schools must demonstrate that they possess state authorization which meets new minimum criteria specified by ED in order to participate in Title IV programs. State requirements may vary in form, content, and applicability for certain types of schools.

*Significant changes to proposed rules:*

- A state's authorization needs to specify the school's name and indicate that the school is approved to offer educational programs beyond secondary education.
- Regulatory provisions applicable to state, religious, and tribal schools are described in greater detail.
- A school established as a postsecondary educational institution by a state may be exempted by name from state approval requirements based on a school's

accreditation or operation for at least 20 years. This exemption is not available to state-established business or nonprofit charitable organizations.

- If a school offers postsecondary education through distance or correspondence education to students in multiple states, the school must comply with the authorization requirements of all of those states.
- If a state is unable to provide appropriate authorizations to schools by July 1, 2011, the schools may request a one-year extension of the effective date of this federal requirement until July 1, 2012, and if needed, an additional one-year extension of the effective date of this federal rule until July 1, 2013.

### **Retaking coursework**

*High-level summary:* If a school's policy permits retaking of coursework in a term-based program (using standard or nonstandard terms), the student's Title IV enrollment status generally may include repetition of previously-passed coursework in the program.

*Significant changes to proposed rules:*

- Retaking of previously-passed coursework in a program is limited to one such repetition of a course, for purposes of determining a student's enrollment status for Title IV funding.
- Retaken coursework cannot be included in a student's Title IV enrollment status if the reason for repeating a course is that the student failed to pass other coursework.

### **Agreements between schools**

*High-level summary:* Where common ownership or control exists between for-profit schools offering portions of a program to a student, the credential-granting school must provide more than 50 percent of the program and must be approved to offer the program in the format utilized. The credential-granting school also must provide information to prospective and current students regarding the portion of the program the school is not providing itself, the name and location of the other school provider(s), the delivery method or format used by the other school provider(s), and any additional costs for students enrolling in the program.

*Significant changes to proposed rules:* None.

### **Incentive compensation**

*High-level summary:* Current incentive compensation "safe harbor" provisions are being removed to more fully align the statutory and regulatory provisions prohibiting such payments. This covers individuals and entities involved in student recruitment, admissions, and financial aid and their management personnel.

*Significant changes to proposed rules:*

- New definition: A “person” or “entity” engaged in student recruitment, admissions, or financial aid.
- Revised definition: Incentives are prohibited for “any part” of a covered individual’s compensation.
- Revised definition: Activities included in “securing enrollments” or “the award of financial aid.”
- Clarification: Profit-sharing payments may be provided to non-covered individuals.

### **Satisfactory academic progress (SAP)**

*High-level summary:* Qualitative (grades and academic standing) and quantitative (pace of completion) aspects of satisfactory progress must be evaluated fully and timely for a student throughout a program of study. Students not maintaining compliance with a school’s SAP policy lose eligibility for Title IV funding, either after a single payment period (if the school evaluates SAP after each payment period) or immediately (if the school evaluates SAP less frequently). Appeal reasons, acceptance criteria, and outcomes are stricter, and close, continued monitoring is required if Title IV eligibility is reinstated based on a successful appeal.

*Significant changes to proposed rules:* None

### **Evaluating validity of a “high school diploma”**

*High-level summary:* A school must develop and follow procedures to evaluate the validity of a student’s high school completion if the school or ED has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The 2011-12 Free Application for Federal Student Aid (FAFSA) will request the high school’s name and location (the online FAFSA will ask only first-time undergraduate students). ED will provide further guidance on how to evaluate validity of diplomas beginning with the 2011-12 award year.

*Significant changes to proposed rules:* None.

### **Return of Title IV funds (R2T4) for term-based programs with modules or compressed courses**

*High-level summary:* If a student completely ceases attendance in modules or compressed courses in which he is enrolled in a term, consider the student to have withdrawn unless the student provides written confirmation of plans to attend a later module in the same period. Determine the number of days or hours the

student completed and the number of days or hours the student was scheduled to complete prior to ceasing attendance, and return any unearned Title IV funds.

*Significant changes to proposed rules:*

- Definitions have been added for a program “offered in modules” and a “nonstandard-term program”.
- For a nonterm or nonstandard-term program, a student’s confirmation of plans to attend a later module in the same period prevents the student from being considered withdrawn only if the later module begins within 45 days after the end of the module which the student ceased to attend.
- If a student does not confirm plans to attend a later module in the same period but does so anyway, or for a nonterm or nonstandard term program, if the student is not scheduled to begin another course within 45 days but does so anyway, the school reverses the R2T4 and treats the student as not having withdrawn after all.
- Other clarifications are provided for treatment of students and Title IV funds in various scenarios.

### **R2T4 and taking attendance**

*High-level summary:* If a school is required by an outside entity to take attendance, or if it requires its own faculty to take attendance for some or all students or time periods, those attendance records must be used to determine withdrawal dates. However, limited attendance-taking requirements will not cause a school to be considered a “school required to take attendance” for non-included students or time periods, if the school is not otherwise obligated to take attendance.

*Significant changes to proposed rules:*

- Clarifying preamble comments are provided regarding census date attendance-taking activities.
- An explanation of the application of these rules in a distance education context is also provided.
- Definitions have been added for “academic attendance” and “attendance at an academically-related activity”, which provide examples of included and excluded activities.

### **Verification of information included on student aid applications**

*High-level summary:* There are many changes for schools, so a close reading of the rules is warranted. The effective date for all changes to verification rules is July 1,

2012, to provide additional time to make needed system changes to support the new requirements.

*Significant changes to proposed rules:*

- Clarification is provided that verification must be completed prior to a school exercising professional judgment, regardless of whether the verification was required by ED or the school.
- If any factors impacting an applicant's dependency status change anytime in the award year, the applicant must update FAFSA information unless the change is to the applicant's marital status. Schools can establish policies as to whether updates to an applicant's marital status are required, and if applicants are required to update household size and number in college in such cases.
- Schools may use IRS transferred data as acceptable verification documentation if the data was obtained for that award year through the IRS data retrieval process and has not been modified.
- Schools must accept a written certification of the amount of taxes paid by an individual who is self-employed or who has filed an income tax return with a foreign government.
- In addition to accepting a tax preparer's signature or stamp on a filer's tax return, schools may accept a paper return on which the tax preparer has typed or printed his name.
- If changes occur in an applicant's data due to verification, all changes to nondollar FAFSA items must be submitted to ED, and changes to dollar items must be submitted if they are \$25 or more.
- An applicant whose *parent is applying for a Direct PLUS loan* is required to have a SAR or ISIR with an official EFC to satisfy the conditions for a late disbursement.
- Schools may not make late disbursements of *any Title IV program funds* unless they have received a valid SAR or ISIR for a student by the deadline published by ED in a *Federal Register* notice.

**Misrepresentation of information to students and prospective students**

*High-level summary:* Schools are responsible for ensuring that misrepresentations do not occur as to their programs, approvals, endorsements, acceptance of credits, costs, aid, and graduate credentials and employability.

*Significant changes to proposed rules:*

- Changes have been made to “limit the reach of the ban on making substantial misrepresentations” to statements made by the school itself, one of its representatives, or any ineligible institution, organization, or person with whom the school has an agreement to provide educational programs or marketing, advertising, recruiting, or admissions services.
- Inaccurate information regarding the extent to which a school’s program prepares students to meet state requirements in both the state where the school is located and any other states in which the program is offered is prohibited.
- Failure to disclose that a degree has not received specialized accreditation is also misrepresentation.

### **Ability to Benefit (ATB)**

#### *High-level summary:*

- A student not having a high school diploma or its equivalent may be determined to have demonstrated an ability to benefit from the education or training offered upon satisfactory completion of six credit hours or 225 clock hours that are applicable toward a degree or certificate offered by the school.
- A single regulatory provision is established for the approval processes for all ATB tests.
- Additional criteria are given for approving tests for non-English speakers and persons with disabilities.
- Test approval procedures and criteria for test publishers and states are specified in greater detail.

#### *Significant changes to proposed rules:*

- Test administrators who are employees of a school assessment center must be “certified” by the test publisher or state (as applicable) to administer ATB tests at the center.
- The definition of “independent test administrator” has been revised, and a new definition of “ATB test irregularity” has been added.
- A review of results of all tests administered by a decertified test administrator is limited to five years.
- The agreement that a test publisher or state enters into with ED must specify that the test publisher or state will immediately contact ED’s Office of Inspector General (OIG) if credible information is discovered that indicates a test administrator or school has engaged in civil or criminal fraud or other misconduct.

- If an individual is a non-native speaker of English and plans to enroll in a program taught in his native language, and the test includes an ESL component or a portion of the program will be taught in English, the individual must take an approved test in his native language and an English proficiency test also.
- The test manual must include guidance on permitted accommodations for individuals with disabilities.

### **Disbursements of Title IV funds**

*High-level summary:* Pell-eligible students must be offered a means by which they can obtain required books and supplies by the seventh day of a payment period, if they have actual or potential credit balances. Schools remain liable for Pell Grant funds released to students who do not begin class attendance.

*Significant changes to proposed rules:*

- A school's policy must permit students to opt out of the process offered by a school for them to obtain books and supplies. If this occurs, the school may, but is not required, to offer a student another way to purchase books and supplies.
- If a student uses the method provided by the school, the student is considered to have authorized the use of Title IV funds — no separate written authorization needs to be obtained by the school from the student.

### **More information**

The National Council of Higher Education Loan Programs (NCHELP) Program Regulations Committee is currently preparing an integrated version of the federal regulations to reflect the Program Integrity final rules. TG will post the integrated regulations on *TG Online* as soon as they become available.

## **Tackling a review of the new regulations — tips and tools**

The final rules for Program Integrity Issues encompass 14 separate topics, so navigating the new requirements in the *Federal Register* publication may appear to be a daunting task. To get started on reviewing what's new or different from current requirements, it may be most helpful to study the topics individually.

The [Notice of Proposed Rulemaking](#) (NPRM) preamble provides a summary of the issues, negotiated rulemaking discussions, and ED's proposed changes to current rules on each of the topics. So a helpful way to get started is to review the NPRM preamble language. Proposed regulatory language follows the preamble, but since proposed rules may differ from final rules it is not critical to review the proposed rules now that final rules have been published.

Next, it will be useful to understand if important policy or implementation issues were identified in public comments on the proposed rules, and whether ED’s initial approach was revised as a result of those comments. This information can be obtained in the preamble section of the [final rules](#).

Finally, it is very important to review the actual changes to regulatory language so schools will understand specifically what is required in the new rules. The final regulatory language follows the preamble section in the *Federal Register* publication.

To facilitate a topic-by-topic review of these regulations, TG has developed a New Regulations Roadmap tool that provides page references for preamble and regulatory language on each topic, for both proposed and final regulations. This will facilitate easier navigation of the NPRM and final rules publications.

### Program Integrity Issues: New Regulations Roadmap

Program Integrity Issue	Proposed Rule June 18, 2010 <i>Federal Register</i> Page Numbers	Final Rule October 29, 2010 <i>Federal Register</i> Page Numbers
Gainful employment in a recognized occupation	34808 – 34809, 34872 – 34874	66835 – 66844, 66946, 66948 – 66950
Gainful employment — new programs	Proposed Rule July 26, 2010* <i>Federal Register</i> 43624, 43639 – 43640	<a href="#">Separate section</a> 66665 – 66672, 66676 – 66677
Definition of a “credit hour”	34809 – 34812, 34871 – 34874, 34890	66844 – 66857, 66946 – 66947, 66949 – 66950
State authorization as a component of school eligibility	34812 – 34813, 34872	66858 – 66868, 66946 – 66947, 66954
Retaking coursework	34814, 34873	66868 – 66869, 66948
Agreements between schools	34814 – 34816, 34873, 34877	66869 – 66872, 66948, 66954
Incentive compensation	34816 – 34820, 34874	66872 – 66879, 66950 – 66951
Satisfactory academic progress (SAP)	34820 – 34823, 34875 – 34877	66879 – 66887, 66951 – 66954
Evaluating validity of a “high school diploma”	34823, 34875	66887 – 66892, 66951
Return of Title IV funds	34824,	66892 – 66897,

<b>Program Integrity Issue</b>	<b>Proposed Rule June 18, 2010 <i>Federal Register</i> Page Numbers</b>	<b>Final Rule October 29, 2010 <i>Federal Register</i> Page Numbers</b>
(R2T4) for term-based programs with modules or compressed courses	34875	66951 – 66952
R2T4 and taking attendance	34824 – 34825, 34875	66897 – 66902, 66952
Verification of information included on student aid applications	34825 – 34834, 34877 – 34881	66902 – 66913, 66954 – 66958
Misrepresentation of information to students and prospective students	34834 – 34837, 34881 – 34882	66913 – 66919, 66958 – 66960
Ability to benefit (ATB)	34837 – 34847, 34875, 34883 – 34889	66919 – 66929, 66952 – 66953, 66960 – 66967
Disbursements of Title IV funds	34847 – 34848, 34889 – 34890	66929 – 66932, 66967 – 66968

\*Although proposed rules on new programs were published in the separate Gainful Employment NPRM, final rules on new programs were incorporated into the Program Integrity final rules.

## Gainful employment — a work in progress

There are many items of substantial interest to schools among the 14 Program Integrity Issues topics. None, however, compares to the level of public attention being focused on one of those issues, gainful employment in a recognized occupation. This has been a particular “hot button” since its debut at the first negotiated rulemaking meeting in November 2009.

### Strong public interest

This topic most directly impacts for-profit schools due to the statutory basis for the schools to participate in the Title IV programs and the predominant nature of their program offerings. However, many public and private nonprofit schools are also very interested in the outcome of the rules, because they will directly impact certificate or other non-degree programs offered by these schools.

Student groups and many other individuals and organizations also have expressed great interest in the outcome of these rules.

### Development of proposed rules

Due to the high level of public engagement in the rulemaking process on gainful employment, the complexity of the issues, and the anticipated impact of the proposed regulatory requirements, ED’s process for developing rules on gainful

employment has taken a slightly different path from the one being followed by the other program integrity topics.

In both cases, the topics were included in the agenda for the negotiated rulemaking team which met three times in November and December 2009, and in January 2010. However, portions of the gainful employment proposed regulations were published in two separate *Federal Registers*, one focused on reporting and disclosure of information on gainful employment program offerings and on the students enrolled in them (Program Integrity NPRM), and the other focused on all other aspects of the proposed rules (Gainful Employment NPRM). The Gainful Employment NPRM was published on July 26, 2010.

### **Continuing public interest in the regulatory process**

Subsequent to the publication of proposed rules, ED held an interactive public conference call on August 11 regarding the Gainful Employment NPRM, to provide additional information regarding the approach taken in the proposed rules. During the public comment period on the proposed gainful employment rules, ED reports that it received over 90,000 separate submissions.

After the close of the public comment period, [ED announced on October 18](#) details on its plans to hold public meetings to receive oral presentations and interact with individuals and organizations that submitted comments on the proposed rules during the public comment period that ended on September 9. Those public meetings are being held this week on November 4 and 5 at ED's offices in Washington, D.C., and more than [30 commenters have signed up to participate in these meetings](#).

### **Development and publication of final rules**

In a [September 24 press release](#), ED provided an update on its plans and schedule for issuing final rules on gainful employment and other program integrity topics. Gainful employment final rules are expected to be published in early 2011, after ED has considered the extensive comments received through the public comment process and at interactive forums such as the meetings occurring in D.C. this week. ED indicated its intention to issue the gainful employment rules in time for them to take effect on or around July 1, 2012.

The most recent regulatory developments include the publication of two separate *Federal Register* notices on October 29 that include some portions of gainful employment final rules, with program data reporting and disclosure requirements being included in the Program Integrity final rules that take effect on July 1, 2011, and requirements for schools planning to offer new programs subject to these rules in a separate portion of the *Federal Register* on the same date, also effective as of July 1, 2011.

## What's next?

ED's [press release](#) announcing the October 29 publication of gainful employment and other program integrity regulations provides a brief overview of the purpose and thrust of the final rules that have been issued on each topic, and reiterates ED's plans to issue final rules on the remaining gainful employment provisions in early 2011, to become effective on or around July 1, 2012.



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