FAME's INSIDE REPORT

INSIDE U.S. DEPARTMENT OF EDUCATION UPDATES

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IMPORTANT NOTICE

FAME's INSIDE REPORT
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INSIDE the October 29, 2010 FINAL REGULATIONS – Program Integrity Issues

Welcome to this fall's Final Regulations! As reported in our earlier Special Editions of Inside Report in July and September, we have been anticipating the finalization of the June 18, 2010 Notice of Proposed Rulemaking (NPRM) that addresses "Program Integrity Issues". With the release of the final regulations in the Federal Register on October 29, 2010, the 145 pages provide plenty of bedtime reading! For those intrigued by federal regulations, there are an additional 13 pages of final regulations put forth on the same day that partially address the prior proposals related to "gainful employment".

The scope of this Special Edition Inside Report will focus attention on the changes that occurred in the final regulations compared to what was proposed in the NPRM this past summer. We would encourage you to review the previous Special Edition Inside Reports from July and September to refresh your memory of the NPRM proposals. Moreover, it is important that each institution read and analyze the impact of these new regulations on your own institution. Again, this report provides a synopsis of the major changes from what was presented in the NPRM.

SUMMARY

The publication of the final regulations in the Federal Register on October 29, 2010 crystallizes the ideas presented in the NPRM into new requirements for schools. For the most part, the NPRM as a whole was not changed dramatically after the Department of Education (ED) received and reviewed the multitude of comments submitted in response to the proposals. As mentioned earlier, we will highlight significant portions of the changes that were made based upon public comment.

The preamble to the regulations states that approximately 1180 parties submitted comments to the NPRM. While this is a good number, it is significantly lower than the approximately 90,000 submitted in response to the "Gainful Employment" NPRM published on July 26, 2010. (You will recall that ED recently announced that the final regulations for the July 26, 2010 Gainful Employment NPRM are delayed until early in 2011.)

The regulations cover 13 topics in detail, and partially address gainful employment. While gainful employment is not fully covered in this set of final regulations, specific reporting and disclosure requirements are stipulated in preparation for the final regulations on the topic that are yet to be published. The thirteen subjects expressly covered in full in this regulation are:

1. Definition of a credit hour
2. State authorization
3. Retaking coursework
4. Written arrangements between institutions
5. Incentive compensation
6. Satisfactory academic progress
7. Validity of high school diplomas
8. Return of Title IV funds in term-based programs with modules
9. Withdrawal date for students at institutions required to take attendance as it relates to Return of Title IV funds
10. Verification
11. Misrepresentation
12. Ability to benefit (what constitutes ATB and testing procedures)
13. Disbursements (timing and method of funding for books/supplies purchase)

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It is important to note that the majority of the new regulations are effective July 1, 2011. A significant exception to this effective date is the provision related to verification. **Changes to the verification requirements are effective July 1, 2012.**

Be sure to review the full set of these new federal regulations as published in the *Federal Register* on October 29, 2010 for your own complete analysis of all items that may be of specific interest to you and your institution.

Now we will take a look at the various changes brought by the final regulations as changed from the NPRM.

GAINFUL EMPLOYMENT - §§600.2, 600.4, 600.5, 600.0, 668.6, and 668.8

ED states that for programs that are affected by the gainful employment disclosures requirements it expects institutions to abide by the intent of the provisions (which is stated to be that students are enabled to make an informed choice about a program) in disclosing required information by making the disclosures in a clear, timely, and meaningful manner. This is stated in §668.6(b) to mean that institutions must provide the required information on the home page of its program web site and provide a prominent and direct link to this page on any other web page about the program. The information is to be presented in an open format in such a way that it can be easily downloaded and searched by commonly used web applications. Additionally, the information should be made available in the promotional materials provided to prospective students. ED will develop a disclosure form for use, but until that time, the institution must still provide the required disclosure information in an appropriate way.

This section also stipulates that an institution must disclose for each program the **placement rate** for each program calculated under a methodology developed by its accrediting agency, State, or the National Center for Education Statistics (NCES). The applicable placement rates must be disclosed by July 1, 2011. When the NCES placement rate becomes available, it must be disclosed.

A formula for on-time completion rate is now prescribed. It is calculated by:

--Determining the number of students who successfully completed the program during the most recently completed award year;

--Determining the number of students, defined above, who completed the program within the normal time [as defined in §668.41(a)]; and, then

--Dividing the number of students who completed the program within the normal time by the total number of students who completed the program, and then multiplying the result by 100 to get the percentage completion rate.

$$\frac{\text{Number of On-time Program Completers}}{\text{Total Number of Program Completers}} \times 100 = \% \text{ On-time Completion Rate}$$

Median Loan Debt information for students is required to be provided when these regulations take effect on July 1, 2011. Not later than October 1, 2011 the information [as described in §668.6(a)] must be reported to ED for the 2006-2007, 2007-2008, and 2008-2009 award years. In addition to the median loan debt, the institution must also report whether the student matriculated to a higher credentialed program at the institution, and if the institution has evidence, information as to whether the student transferred to a higher credentialed program at another institution. If an institution is unable to provide some or all of the required information, it must provide an explanation of why the missing information is not available.

Links to O*Net: A modification was made in §668.6(b) in the final regulation to allow, in cases where a 6-digit CIP code yields more than ten occupations, an institution to provide links to a representative sample of Standard Occupational Classifications (SOCs) for which its graduates typically find employment within a few years after completing a program. The SOC crosswalk link is http://online.onetcenter.org/crosswalk/.

Disclosing Program Costs: This revision mandates in §668.6(b) that institutions must disclose, for each program, all of the required information in its promotional materials and on a single web page the total amount of tuition and fees it charges a student for completing the program "within normal time", the typical costs for books and supplies (unless these are included as part of tuition and fees), and the amount of room and board, if applicable. The institution may include information on other costs such as transportation and living expenses, but must provide a web link, or access, to the program cost information the institution provides under §668.43(a). (This is information the institution is required to provide under general consumerism information about cost of attendance, etc.)

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DEFINITION of a CREDIT HOUR - §§600.2, 602.24, 603.24, 668.8

It is important to note that no changes were made to the NPRM as it relates to the definition of a credit hour. ED determined that the proposed definition of a credit hour was necessary to establish a basis for measuring eligibility for Federal funding. However, §600.2 (definition of a credit hour) was revised to clarify that the amount of work specified in paragraph (1) is a minimum standard and that there is no requirement for the standard to be exceeded. But, an institution could exceed the minimum if they so choose.

Institutions should be reminded that due to the separate conversion formula in the new §668.8(l), programs that are subject to the new **clock-to-credit-hour conversion** of 37.5 to 1 for semester and trimester credits and 25 to 1 for quarter credit programs. This change in the formula will result in less Pell Grant for short programs of 480-599 clock hours which will be subject to the 70/70 rules for loans and programs between 600-899 hours will lose some Pell Grant and loan money.

STATE AUTHORIZATION - §§600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9, and 668.43(b)

Amendments to §600.9 were made to distinguish the type of State approvals that are acceptable for an institution to demonstrate that it is authorized by the State to offer educational programs beyond the secondary level. Examples of these changes are institutions that the State established by name as an educational institution through a State charter, statute, constitutional provision, or other action to operate educational programs beyond secondary education, including programs leading to a degree or certificate. However, if the State has an applicable approval or licensure process, the institution would have to comply with those requirements to be legally authorized. Some institutions created by the State may be exempted by name from any State approval or licensure requirements based upon the institution's accreditation by a recognized accrediting agency or based upon the institution being in operation for at least 20 years. If the entity offering education in a State is not established by the State specifically as an educational institution (for example, an entity established by the State as a business or non-profit charitable organization), then the State must have a separate procedure for approval or licensure for that entity to be named as eligible to operate programs beyond secondary education.

Additionally, religious institutions may be considered legally authorized by a State even if it is exempt from State authorization as a religious institution (as now defined in regulation) by State law. Religious institutions must still have a process to review and appropriately act on complaints concerning the institution. Further, the status of tribal institutions has been clarified in §600.9, but tribal institutions must also have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws. If a tribal institution has a physical presence or offers programs that are located outside tribal lands in a State, the tribal institution must demonstrate that it has the applicable State approvals necessary in those situations.

Complaints: In the final regulations, §668.43(b) was revised to provide that an institution must make available to a student or prospective student contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

Distance Education: A revision to the NPRM's §600.9 clarifies in paragraph (c) that, if an institution is offering postsecondary education through distance education or correspondence education to students in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. The institution must be able to document the applicable State's approval upon ED's request.

RETAKING COURSEWORK - §668.2

The definition of "full-time student" has been revised in §668.2(b) to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student's failing other coursework.

WRITTEN ARRANGEMENTS BETWEEN INSTITUTIONS - §§668.5 and 668.43

Take note that there were no changes to §§668.5 and 668.43. Institutions are encouraged to review the final regulations and the July, 2010 Special Edition Inside Report for more details on this provision. It is important to remember the requirement that if a written arrangement is between two or more eligible institutions that are controlled by the same individual, partnership, or corporation, the institution that grants the degree or certificate must provide more than 50% of the educational program.

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INCENTIVE COMPENSATION - §668.14(b)

This section in the final regulations clarifies a topic of much discussion. The regulations are narrowed down to more closely align with the wording in the statute and remove the historic "safe harbor" provisions in effect since 2002. As finalized, the regulations allow for merit-based increases in employee compensation, but adjustments to employee compensation may not be "in any part," directly or indirectly based upon success in securing enrollments or awarding financial aid. The definition of individuals covered by this section of regulation expressly includes any employee who is engaged in recruiting or admitting students or who makes decisions about and awards Title IV funds, "as well as higher level employees". Institutions are encouraged to review the comments and ED's discussion of them related to this topic in the preamble to the regulations on pages 66872 through 66879 for more background and direction on this topic.

SATISFACTORY ACADEMIC PROGRESS - §§668.16(e), 668.32(f), and 668.34

Few changes were made in this section from what was presented in the June 18, 2010 NPRM. Schools retain many areas of flexibility in establishing their satisfactory academic progress (SAP) policies. Of note is that schools are still required to assess a student's SAP at least once per year for programs longer than an academic year in length. And, if the school chooses to only evaluate SAP annually, that assessment must correspond with the end of a payment period. Schools that choose to monitor SAP more frequently have more flexibility. For example, if the institution's policy is to measure SAP at the end of each payment period, a student may be placed on financial aid "warning" status automatically. However, for schools that measure SAP only on an annual basis (i.e., SAP is not measured at the end of each payment period), a student determined to not be making SAP may only retain Title IV eligibility if the student files an appeal and the institution has merit to approve the appeal.

Institutions have the option to choose to use financial aid probation and warning statuses or not, and whether to have an appeal process or not [see **§668.34(a)(9)**].

As reported in our July Special Edition Inside Report, the definitions for the terms appeal, financial aid probation, financial aid warning, and maximum timeframe are now provided in regulation in **§668.34(b)** to, as stated in the preamble, "promote consistent application of these types of designations." Incorporated into the definition of maximum timeframe is the element related to a student's "pace". While this is not a new concept, it is a new component included in this definition. It is defined as "the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe and provides for measurement of the student's progress at each SAP evaluation". It is incumbent upon institutions to understand each of these new definitions and utilize them appropriately.

VALIDITY of HIGH SCHOOL DIPLOMAS - §668.16(p)

There were no changes made in the final regulations from what was published in the June 18, 2010 NPRM. You will recall that schools will be required in certain cases to determine the validity of a student's high school diploma. With the implementation of the new rules, ED will make an attempt to determine the validity of a student's high school diploma. Starting with the 2011-2012 FAFSA, ED will begin collecting the name of the student's high school from which he/she reportedly graduated. This FAFSA question will be required of first-time undergraduate students in 2011-2012, but a school must still verify any high school diploma if the school or ED has reason to question the validity of the high school diploma. It is noteworthy that this validation requirement does not apply to home-schooled students.

Schools must develop and follow their own policies for the purpose of determining the validity of a high school diploma. ED states that they will provide guidance for implementing this new requirement via publications such as the Federal Student Aid Handbook, Dear Colleague Letters, etc. However, in the meantime schools should begin contemplating their policy development and how this new requirement may impact their operations.

RETURN of TITLE IV (R2T4) FUNDS in TERM-BASED PROGRAM with MODULES or COMPRESSED COURSES - §§668.22(a), 668.22(b), 668.22(f), and 668.22(l)

This revision to regulations is intended to ensure more equitable treatment between students across all programs by eliminating major differences in the treatment of students who withdraw from term-based, non-standard term, and nonterm-based programs offered in modules. As a result of this final regulation, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time of withdrawal that he or she will attend a module later in the same payment period or period of enrollment as long as that module begins not later than 45 days after the one the student ceased attending.

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If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and subsequently reenters the same program prior to the end of the period, the student is considered to be in the same payment period or period of enrollment upon return and is eligible to receive any remaining funds he or she was eligible for prior to withdrawal, contingent upon continuing to meet all other eligibility requirements, including any funds perhaps already returned as a result of R2T4. Thus in some cases, an institution may have to reinstate funds previously returned in accordance with R2T4 regulations.

In nonterm and non-standard term programs, if a student does not begin a subsequent course within 45 calendar days, the student must be treated as a withdrawal for Title IV purposes unless the student is on an approved leave of absence.

In determining the percentage of a payment period or period of enrollment completed, the total number of calendar days in the period does not include, in cases where the courses in the period are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course during that period of time.

WITHDRAWAL DATE for STUDENTS at INSTITUTIONS REQUIRED to TAKE ATTENDANCE as it RELATES to RETURN of TITLE IV FUNDS - §§668.22(b) and 668.22(l)

This section of regulation has expanded the classification of institutions determined to be required to take attendance to include not only those required to do so by an outside entity, but now also any institution that may itself have a requirement of its faculty to take attendance. This would also include programs where students are required to document attendance in the classes.

It is also important to note that clarification is given to what constitutes an academically-related activity. Regulation now specifies that a student engaged in academic counseling or advising is not considered academic attendance. Further, for online courses, simply logging into the class "without active participation" is specifically excluded as being classified as an academically-related activity.

VERIFICATION – SUBPART E of PART 668

As noted earlier, this section of the final regulations related to verification become effective **July 1, 2012** in contrast to the July 1, 2011 effective date for other provisions of the regulation package.

Some of the key points affected in this section are:

- Verification before professional judgment - **§668.53(c)**
  - Institutions must now complete verification before you may exercise professional judgment, whether selected or unselected
  - This codifies ED's longstanding policy
- The percentage cap on the amount of students selected for verification has been removed - **§668.54(a)**
  - This provision removes the 30 percent cap on applicants to be verified
  - Must verify all applicants selected by ED (except unsubsidized aid applicants only)
- Changes in the exclusions from verification requirements - **§668.54(b)**
  - It restructures the paragraph to clarify when data is not required to be verified for the applicant/parent/spouse
  - Lack of a physical mailing address is no longer an exclusion
  - Exclusions are only allowed in cases where parents or spouse cannot be located due to contact information being unknown (ability to do Internet searches now to locate people)
- Updating information - **§668.55(c)**
  - All changes in dependency status must be updated
  - Includes changes due to change in marital status
  - May have in policy a "cut-off date" after which institution will not consider updates to the student's marital status
  - School may update student's marital status if it is to the student's benefit
- Data elements to be verified - **§668.56**
  - Eliminates the currently required five items
  - Instead, ED specifies each year information and documentation required to verify
  - Varies from student to student
  - Targets verification to "most error prone" data items

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- Acceptable documentation - **§668.57(a)**
  - o codifies the use of IRS data retrieval as acceptable
  - o If applicant/parent/spouse has an IRS filing extension, and school requires submission of the tax return when it is filed, school must re-verify AGI and taxes upon receipt
  - o A tax return signed or stamped by a tax preparer must also include the preparer's SSN, EIN, or Preparer's TIN
  - o If selected by ED to verify other information, the applicant must provide the specified documentation
- Interim disbursements - **§668.58(a)(3)**
  - o The regulation allows for disbursement after verification but before receiving the corrected SAR/ISIR
  - o The institution must ensure corrections are submitted to ED for correction within the deadline to avoid liability
- Changes in FAFSA information require correction/more limited tolerance level - **§668.59**
  - o The only allowable tolerance is one single $25 tolerance on a single dollar item
  - o Must submit all changes to FAFSA information
  - o Applicable to applicants receiving subsidized student financial assistance
  - o The institution must make appropriate award changes
  - o The option to refer to ED verification discrepancies has been eliminated. Institutions must now resolve all discrepancies in verification.
- Deadlines for documentation = **§668.60**
  - o Much the same as in prior regulation
  - o Requires institutions to follow cash management rules **[§668.166(a)(b), §668.167(c)]** if student received subsidized loan proceeds
  - o Pell Grant payments are to be based upon the valid SAR/ISIR as verified, whether or not the student is still enrolled. No longer is the payment limited to the maximum of the lowest award amount if the student is no longer enrolled when the verified SAR/ISIR is received.
- Funds recovery - **§668.61(c)**
  - o In the new regulation, the institution is required to reimburse funds using its own funds if it disbursed subsidized student financial assistance without receiving a corrected SAR/ISIR within the applicable deadlines.
  - o The rest of **§668.61** remains much the same as previously

MISREPRESENTATION - §§668.71 through 668.75

In this critical section of the regulations, few changes were made to what was proposed on June 18, 2010. Of note, however, is the fact that the final regulation narrows the scope of what is considered misrepresentation. Specifically, the preamble states that statements made by students through social media outlets, or by entities that have agreements with the institution to provide services, such as food services, other educational programs, marketing, advertising, recruiting, or admissions services would not be covered by these misrepresentation regulations.

Other changes in the final regulations include the revision that prohibits false, erroneous, or misleading statements concerning whether completion of an educational program qualifies a student for licensure or employment in the States in which the educational program is offered. Also included as prohibited under the misrepresentation section is the failure to disclose that the degree requires specialized accreditation.

Institutions would do well to review all of their information materials for compliance with these new regulations. It is advisable to keep in mind the intent of the regulations to prohibit misleading statements which is defined as "any statement made that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means."

ABILITY TO BENEFIT - §668.32

There were no changes to the definition of ability to benefit from what had been put forth in the proposed regulation. Since the definition of ability to benefit was expanded in 2008 to include the satisfactory completion of 6 credits, the regulations were needed to define that terminology. Six credits as defined in the regulation for "ability to benefit" (ATB) now means:

- 6 semester hours,
- 6 trimester hours,
- 6 quarter hours, or
- 225 clock hours

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If a clock to credit hour conversion is required for non-degree granting programs, it appears that 225 hours is the equivalent. Generally, if a student is using one of these definitions to demonstrate ATB, they would not gain eligibility until after the successful completion of the enrollment period in which the required hours are earned. However, in cases where a student is enrolled in a period that consists of multiple modules, it is possible that the student could gain eligibility upon completion of the module in which the student reached the applicable hours. But, the student would only be eligible for aid based upon a cost of attendance as adjusted for the remaining portion of that period.

There were also changes to the regulations in Subpart J that deal with the administration of ATB tests and the role of test publishers which we have not addressed here. For applicable details please review the pertinent Subpart J of Part 668 in the regulations.

DISBURSEMENTS (TIMING and METHOD of Funding for BOOKS/SUPPLES PURCHASE - §§668.164(i), 685.102(b), 685.301(e), 686.2(b), and 686.37(b)

The provision in **§668.164(i)** of the regulation stipulates that an institution must provide a way for Pell Grant recipients to obtain or purchase required books and supplies by the seventh day of a payment period in certain conditions. Specifically, the regulation applies to an institution that is on the advance system of payment, and only when the student would have a credit balance under **§668.164(e)**, 10 days before the start of the payment period. The institution would have to provide the amount that is the lesser of the presumed credit balance or the amount needed by the student, as determined by the institution.

Notable changes to this regulation as presented in final form versus the proposal is that now institutions must have a policy under which a Pell eligible student my opt out of the way the institution provides for the student to purchase books and supplies by the seventh day of classes of a payment period. Additionally, if the student uses the method of payment provided by the institution for payment by the seventh day of classes, the student is considered to have authorized the use of Title IV funds and the institution does not need to obtain a written authorization described in **§§668.164(d)(1)(iv) and 668.165(b)** for these purposes only.

In summation, the regulations that were finalized on October 29, 2010 related to program integrity in the Title IV programs are significant. Institutions made significant impact on the outcome of the final regulations in many ways by their responses to the proposed regulations presented in June. We have provided a summary of the overall regulation package that we believe will be a good starting point for your analysis and review. Institutions would do well to thoroughly review each component of these new regulations to determine the impact on their operations and activities to appropriately address these changes. Watch for further updates as more information becomes available from ED.

For members of the National Association of Student Financial Aid Administrators' (NASFAA), feel free to peruse items on the website at www.nasfaa.org. They have a number of articles related to the regulation package.

Members of AACS can also review information at www.beautyschools.org.

Also, members of APSCU may desire to review the webinar archive under the "Publication" tab at APSCU's website at www.career.org for the recording of the presentation on November 5, 2010.

REMINDER:

FAME's 2011 Financial Aid & Management Conference, April 5th, - 7th, 2011
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