Fact Sheet: Changes to Protect Veterans, Students, and Taxpayers and Support Incarcerated Students

Today, the U.S. Department of Education (Department) is publishing final regulations that promote accountability, expand college access to incarcerated students, and strengthen protection for veterans, service members, students, and borrowers.

The final regulations implement a statutory change passed in the *American Rescue Plan Act* that will better protect veterans, service members, and their families from aggressive and deceptive recruitment by requiring that for-profit colleges receive at least 10 percent of their revenue from sources other than education assistance provided by Federal agencies. Additionally, the regulations will better protect students and taxpayers by strengthening requirements for institutions of higher education (institutions) undergoing changes of ownership, including for-profit institutions seeking to convert to non-profit status. Finally, the regulations implement a statutory change recently passed by Congress to provide greater access for incarcerated students to high-quality educational programs and clarify the process by which incarcerated students in qualifying prison education programs can receive Pell Grants.

These regulations continue the Administration's commitment to supporting students and holding institutions accountable. The final regulations published today were strengthened by robust public comment from stakeholders across the country and include several changes that clarify and improve parts of the Notice of Proposed Rulemaking published in July.

Additional details on the major provisions of the rule and changes made in response to public comment are included below.

90/10 Rule

Last year, President Biden signed into law the *American Rescue Plan Act*, which requires that for-profit institutions receive at least 10 percent of their revenue from sources other than federal education assistance funds or lose access to Federal financial aid. Previously, for-profit institutions were permitted to count Federal money from sources other than the Department, including funds from the Department of Veterans Affairs (VA) and Department of Defense, toward meeting the 10 percent revenue requirement. Now those funds will be counted as Federal education funds included in the 90 percent portion of the calculation. The final regulations implement this change, closing a significant loophole which incentivized some for-profit colleges to aggressively recruit and even deceive veterans and service members so they could take in more Department funding. The Department achieved consensus in negotiating these changes, and the final regulations state that:

- Proprietary institutions include in their 90/10 calculation all Federal education assistance, not just Federal financial aid, that goes toward tuition, fees, and other institutional charges, with the exception of funds from a Federal source that go directly to a student and are specifically designated to cover expenses other than tuition, fees, and other institutional charges, such as housing. The Department will publish a list of the Federal education assistance programs that are counted in the 90 percent revenue test in the *Federal Register* and update the list as needed. This change ensures that for-profit institutions are not overly reliant on taxpayer funds and are able to pass a simple market test to generate at least 10 percent of their revenue from other sources.

- Institutions cannot delay the draw-down of funds from the financial aid programs (i.e., Title IV programs) past the end of the fiscal year to reduce the amount of Federal aid reported in a fiscal year.
- Institutions can only count actual revenue from principal payments by the borrowers that are made on loans and alternative-financing arrangements, such as income-share agreements (ISAs). Institutions also cannot sell these student obligations and count those proceeds as qualifying payments for tuition and fees for the 90/10 revenue calculation. The final regulations further clarify the terms ISAs must meet in order to be counted and makes other changes to ensure that private loans and ISAs are treated consistently. For-profit colleges may only include funds generated from activities conducted by the institution that are necessary for the education and training of its students and must be related directly to services performed by students. Non-federal revenue may also include revenue generated by programs that do not participate in Title IV programs, as long as they meet certain criteria to ensure value to students.
- For-profit colleges that fail the 90/10 rule are required to notify the Department and the institution's students in a timely manner.

Changes in Ownership

In recent years, the Department has seen an increase in the number of institutions applying for changes in ownership where institutions seek to convert from proprietary to nonprofit or public status. A 2020 report by the U.S. Government Accountability Office raised concerns that many conversions involved continued "insider involvement," where someone from the former for-profit ownership was also involved with the nonprofit purchaser, suggesting greater risk of impermissible benefits to those insiders.

The final regulations address the increased complexity of changes in ownership and help mitigate increased risk to students and taxpayers. These changes provide critical protections, particularly where for-profit colleges are seeking to convert to public or private nonprofit status, to ensure that colleges meet the requirements under law. It also means former owners cannot receive payments based upon inflated valuations and still have the college be considered nonprofit. They also clarify requirements on applications while detailing Department procedures in evaluating these changes. The final regulations:

- State that nonprofit status for an institution undergoing a conversion is unlikely to be approved if the institution owes debts to a former owner or if it holds a revenue-sharing or other agreement with a former owner, current or former employee, or board member that is inconsistent with the market value for the services provided. The final regulations clarify that the market value consideration also applies to prior owners but does not apply with respect to debt arrangements with former owners, which would be unallowable.
- Clarify that a for-profit institution remains for-profit for the purposes of Title IV unless and until the Department approves its application to change to non-profit status.
- Require colleges to notify both the Department and their students of a planned change in ownership at least 90 days in advance, which provides the Department time to assess the planned transaction and students with sufficient notice that their institution may be changing hands.
- Ensure that the riskiest transactions are accompanied by financial protection for taxpayers. Consistent with current practice, the Department will require at least a 10 percent letter of

credit of the institution's prior year Title IV aid volume if the new owner is missing one of the two years of required audited financial statements and at least 25 percent if the new owner is missing both years. The Secretary may also require an additional 10 percent (or more) of financial protection from the institution undergoing the transaction, as necessary.

- Eliminate an existing requirement that the Department continue an institution's participation during the review of the change in ownership application with the same terms and conditions in their Title IV agreement as prior to the transaction. This change provides the Department with much-needed flexibility to ensure students are protected where the prior terms are inadequate to protect against the risk of the transaction.
- Increase transparency into an institution's owners by requiring the reporting of ownership interest changes to 5 percent, instead of the current threshold of 25 percent. The final regulations clarify that ownership changes comprising at least 5 percent, but less than 25 percent, of ownership can be reported quarterly instead of within 10 days in most circumstances.
- Raise the threshold for a full review of change in control from 25 percent ownership interest changes to 50 percent, or a lower level as determined to be appropriate by the Secretary.
- Clarify the definitions of main campus, branch campus, and additional location. The final regulations remove the requirement that distance education programs must be associated with the main campus and will consider additional changes for a potential future rulemaking. However, the Department will continue to classify distance education programs as associated with the main campus, which is consistent with current practice.

Pell Grants for Incarcerated Students in Prison Education Programs

A growing body of research has shown that high-quality postsecondary education programs offered in correctional facilities to incarcerated individuals reduces recidivism, and may have other benefits as well. Congress recently passed legislation which establishes eligibility for incarcerated individuals enrolled in eligible prison education programs to receive Pell Grants. The final regulations implement the statutory changes to provide access to Pell Grants and support to incarcerated individuals to receive high quality postsecondary education. In addition, the regulations establish important guardrails for incarcerated students and taxpayers to protect students from enrolling in programs that would not permit them to benefit. The Department achieved consensus in negotiating these changes and the final regulations provide that:

- Incarcerated students who are enrolled in a eligible prison education program may access Pell Grants, up to the cost of attendance, for enrollment in public or nonprofit postsecondary educational programs while in a correctional facility.
- Accrediting agencies and the Department must approve an institution's first prison education program at the first two correctional facilities where the institution operates such programs. The accrediting agency reviews will include a site visit and a thorough review to ensure that the prison education program meets the same standards as substantially similar programs that are not prison education programs offered by the institution.
- As oversight entities (the state department of corrections or Federal Bureau of Prisons or another entity, as applicable) assess and approve prison education programs in the correctional

facilities they oversee, they will be required to ensure there is a feedback process with relevant stakeholders, including representatives of incarcerated individuals, to inform their decisions.

- Oversight entities would also need to consider key program inputs and details about the operation of the program— such as whether instructors and credit transfer options are substantially similar for the prison education program and programs offered at the school's campus—as part of a holistic determination about the program's approval.
- In consideration of public comments received, the final regulations make it optional for oversight entities to consider outcome factors, such as earnings, job placement, and post-release enrollment, when determining whether a program is in a student's best interest. However, oversight entities will still need to consider program inputs such as experience and credentials of instructors, availability of academic and career advising services, and transferability of credits.
- Qualifying prison education programs do not need to lead to licensure or certification, but if they do, the programs must be designed to meet those educational requirements in the state where the correctional facility is located (or, for federal prisons, where most individuals will reside after release). The postsecondary institution offering the PEP is not able to enroll an incarcerated individual into a PEP if there is a prohibition on the individual qualifying for professional licensure or employment based on the individual's conviction. This protects students from exhausting limited Pell Grant funds on a PEP that would not benefit them upon completion.
- Institutions seeking a waiver to the statutory limit that not more than 25 percent of students enrolled at an institution may be incarcerated individuals must submit an application to the Department. If a waiver is granted, institutions may increase their enrollment of incarcerated students to reasonable limits set by the Department. The Department can terminate a waiver at any time if it determines that the institution no longer meets the requirements for a prison education program.
- Reporting requirements ensure that the Department is able to provide key data to the oversight entities and the institutions about their prison education programs, and to fulfill the Congressional mandate for a public report on the operation of such programs.