

Fact Sheet: Proposed Regulations to Support and Protect Students and Borrowers

The Biden-Harris Administration is proposing new regulations that carry forward the Administration's commitment to supporting students and holding institutions accountable. The regulations propose to hold for-profit institutions to a strengthened requirement that they obtain at least 10 percent of revenue from non-federal sources. Additionally, the proposed regulations would strengthen the requirements for institutions undergoing changes in ownership, including for-profit institutions seeking to convert to nonprofit status. Finally, the proposed rules clarify the process by which incarcerated students in qualifying prison education programs can begin to access Pell Grants. The public is invited to comment on the proposed regulations for 30 days. The Department of Education (Department) will consider those comments and publish final rules this fall so that they will take effect on July 1, 2023.

Summary of Major Provisions:

90/10 Rule

Proprietary institutions have long been required to obtain at least 10 percent of their revenue from sources other than Title IV financial aid like Pell Grants and federal student loans. Last year, President Biden signed into law the *American Rescue Plan Act*, which requires that at least 10 percent of funds come from sources other than any federal education aid. The proposed regulations would be a change from current practice, in which institutions can count federal aid for veterans and service members to meet the 10 percent revenue test. Prior to this change, this loophole led some institutions to aggressively target these populations because every \$1 brought in from them meant they could receive \$9 more in Department of Education aid without needing to secure any private investment. These proposed regulations, on which negotiators reached consensus, would provide that:

- Proprietary institutions include all federal education assistance, not just Title IV aid, in their 90/10 calculations. The Department would publish in the *Federal Register* a list of the programs required for inclusion and update the list as needed. This change would ensure that for-profit institutions are not overly reliant on taxpayer-financed aid.
- Institutions cannot delay the draw-down of Title IV funds past the end of the fiscal year as a way to game the 90/10 calculation.
- For-profit institutions are restricted in when and how they can count institutional loans and alternative financing arrangements—like income-share agreements (ISAs)—as non-federal revenue. Specifically, the proposed regulations would only allow institutions to count actual revenue from principal payments made on these loans and arrangements and would create consumer protection measures for ISAs or other alternative financing agreements that are included as non-federal revenue. Institutions couldn't sell their portfolios of ISAs or institutional loans—sometimes for pennies on the dollar—and include those funds as non-federal revenue.
- For-profit institutions may include non-federal revenue from non-Title IV programs in their 90/10 calculations as long as they are ineligible programs that are taught by the institution's regular instructors and are located at a campus of the institution or an employer facility. The Department agreed to this language in the interest of reaching consensus, and is also seeking feedback from the public about how to best monitor the growth of these programs as a potential source of non-federal revenue for institution close to failing the 90/10 rule.

- For-profit colleges that fail the 90/10 rule are required to notify both the Department and the institution's students in a timely manner.

Changes in Ownership

A growing number of institutions undergo often-complex changes in ownership transactions, leading the U.S. Government Accountability Office to raise [warnings](#) that many of these conversions involved continued "insider involvement," presenting risks to students and taxpayers. The Department sought to clarify the requirements and processes such institutions must follow to expand protections for students and taxpayers. The proposed regulations would:

- Ensure that nonprofit institutions are conducting themselves appropriately by further clarifying that an institution is generally not a nonprofit if it is an obligor on a debt owed to a former owner or where it holds a revenue-sharing or other agreement with a former owner or a current or former employee or board member that is inconsistent with the market value for the services provided. This will provide critical protections, particularly where for-profit colleges are seeking to convert to public or private nonprofit status, to ensure that colleges follow the law.
- Require colleges to notify both the Department and their students of a planned change in ownership at least 90 days in advance, allowing the Department to assess the contours of the planned transaction and providing students sufficient notice that their institution may be changing hands.
- Ensure that the riskiest transactions—those where the new owner is missing financial statements or where the Secretary otherwise deems it necessary—are accompanied by financial protection for taxpayers. Specifically, consistent with current practice, the Department would require a 10 percent letter of credit if the new owner is missing one of the two years of required audited financial statements and 25 percent if the new owner is missing both years. The Secretary may also require financial protection from the institution undergoing the transaction, as determined to be necessary.
- Eliminate an existing requirement that the Department continue an institution's participation with the same terms and conditions in their Title IV agreement as prior to the transaction. Where the prior terms are inadequate to protect against the risk of the transaction, this would provide the Department with much-needed flexibility to ensure students are protected.
- Lower the threshold for reporting on changes in ownership from a change in 25 percent of the ownership interest to 5 percent, increasing transparency into the transaction; and require a full review of change in control at a change of 50 percent, or at a lower level as determined to be appropriate by the Secretary.
- Clarify or incorporate the definitions of main campus, branch campus, and additional location, and require that institutions report their distance education programs through the main campus of the institution (consistent with current practice). In addition to ensuring greater consistency in institutional reporting, the changes to distance education would ensure equitable treatment for students enrolled in distance education and enrolled at the main campus for closed school discharge purposes.

Pell Grants for Incarcerated Individuals

Postsecondary programs offered in correctional facilities have been demonstrated to increase students' skills, improve employment outcomes, and reduce recidivism. Congress recently established eligibility for Pell Grants for incarcerated individuals enrolled in qualifying programs.

These proposed regulations, on which negotiators reached consensus, would clarify and codify requirements for providers of prison education programs, providing that:

- Incarcerated students who would otherwise be eligible for Pell Grants and who are enrolled in a qualifying prison education program may access Pell Grants, up to the cost of attendance, for enrollment in their postsecondary programs while in a correctional facility.
- As oversight entities (the state department of corrections or federal Bureau of Prisons or another entity, as applicable) evaluate an institution's eligibility to operate in the correctional facility, they would need to ensure a feedback process with affected stakeholders, including representatives of incarcerated individuals, to inform their decisions. Oversight entities would also need to consider key student outcomes and details about the operation of the program—such as whether instructors and credit transfer are substantially similar for the prison education program as on the school's campus—as part of a holistic determination about the program's approval.
- Qualifying prison education programs would not need to lead to licensure or certification, but if they do, the programs would need to be designed to meet those requirements in the state where the correctional facility is located (or where most individuals will reside after release, for a federal prison). The programs also need to lead to occupations without state or federal prohibitions on the licensure or employment of formerly incarcerated individuals.
- Institutions seeking a waiver to the statutory limit that not more than 25 percent of students may be incarcerated individuals would be evaluated based on their completion rates, administrative capability, and financial responsibility. If granted, institutions with a waiver may increase their enrollment of incarcerated students, to include up to 50 percent of the student body as incarcerated students for the first five years of the waiver, and then up to 75 percent thereafter.
- Institutions would obtain approval from their accrediting agencies and from the Secretary only for the first eligible prison education program at each of the first two additional locations, and then would simply report subsequent program offerings to the Secretary.
- Reporting requirements would ensure 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.