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## **Misrepresentation & Incentive Compensation - The Overview**

FA Experts Professional Training Seminars

Presented by:

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# Agenda

- What are Program Integrity Regulations?
- “Protecting Consumers”
- Misrepresentation
- Incentive Compensation
- Questions?

# What are Program Integrity Regulations?

- Notice of Proposed Rulemaking (NPRM)
  - Published 6/18/10
  - Comment period ended 8/2/10
- Final Regulations
  - Published 10/29/10
- Policy Objectives
  - To ensure that only eligible students receive federal funds.
  - Protecting consumers (students and families).

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# “Protecting Consumers”

*Contained 4 components:*

- **Misrepresentation**

- Seeks to take action against schools engaging in “deceptive advertising, marketing, and sales practices.”

- **State Authorization**

- **Credit Hour – Clarification of Definition**

- **Incentive Compensation**

- Seeks to prevent schools from providing a “commission/bonus or other incentive payment...on success in securing enrollments or financial aid...”

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# Misrepresentation (Subpart F)

Applies to ALL institutions participating in Title IV Financial Aid programs, not just for-profit institutions.

Has been in place for 25 years and the regulations going into effect on 7/1/11 are:

“Revising the definitions and provisions that describe the activities that constitute substantial misrepresentation by an institution of the nature of its educational programs, its financial charges, or the employability of its graduates.”

Merely “...strengthen the Department’s regulatory enforcement authority over institutions that engage in substantial misrepresentation and further clarify what constitutes misrepresentation,”

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source: Federal Register/Vol.75, No. 209, 10/29/10

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# So What is Misrepresentation – really?

- Prohibits “...false, erroneous, or misleading statements directly or indirectly to current students, prospective students, or any member of the public, an accrediting agency, a State agency or the Secretary.”
- Regulation defines “substantial misrepresentation” as “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”

All of the above can be done through visual, oral or “other means”, and can be interpreted to include deliberate omissions of relevant data and/or material(s).

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# So....where could “Misrepresentation” be found?

*Answer: Anywhere and Nowhere!*

- Website
- College Catalog
- College Staff/Administrators
- Third party contractors

The Department is looking not only for what you say/print, but what you **don't** say/print. This is referred to as “affirmative omission” and can also be seen as a misrepresentation.

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## Incentive Compensation - Defined

*According to the U.S. Dept of Education and per the School's Program Participation Agreement:*

*"...a school will not provide a commission, bonus or other incentive payment based in any part, directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding awarding Title IV funds."*

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# In a Reauthorization Galaxy, Far..Far...Away - November 2002....Safe Harbors

- Adjustments to Employee Compensation
- Enrollment in Programs Not Eligible for Title IV Aid
- Contracts with Employers
- Profit-Sharing/Bonus Payments
- Compensation Based upon Completion of Program
- Pre-Enrollment Activities
- Token Gifts
- Profit Distributions
- Internet-Based Activities
- Payments to 3<sup>rd</sup> Party for NON-Recruitment Activities
- Payments to 3<sup>rd</sup> Party FOR Recruitment Activities
- Managerial and Supervisory Employees

# Beam Us Forward – Current Day

- Back in 2002 the USDOE did not believe that “...the safe harbors will allow unscrupulous institutions to engage in the kinds of improper recruiting activities that took place in the 1980s and early 1990s....”
- 12 Safe Harbors Removed- 10/29/10 Final Regulations
- Restored institutions back to pre-2002 ambiguity.

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# So...how do I get paid Obi-Wan?

- Adjustments to Compensation
  - Annual adjustment acceptable
    - Not on securing enrollments
    - Can be merit-based
    - Qualitative on other measures (i.e. seniority, length of employment)
  - Multiple adjustments NOT acceptable
    - However, free to promote and demote
- Profit-sharing allowed provided payments not paid to person engaged in student recruitment/admission activity/Title IV Aid awarding

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## Two Part Test

- 1) ...”payment is commission, bonus, or other incentive payment...for services rendered; AND
- 2) “...provided to any person based in any part, directly or indirectly, upon success in securing enrollments of the awarding of financial aid.”

If both apply, then the payment is prohibited and would violate regulation.

# Questions?

“Suppose no one asked a question, what would be the answer?”

- Gertrude Stein (1928)

Source: Federal Register, November 1, 2002; Federal Student Aid Conference, 2009;  
Federal Register, October 29, 2010; USDOE Regulatory Update, Spring 2011