



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Program Integrity Rules

Law/Act:	Program Integrity Rules	
U.S. Code Citation:	20 U.S.C. §§ 1001-1161 (Higher Education Act)	
Code of Federal Regulations Citation:	34 C.F.R. pt. 600, 602, 603, 668, 682, 685, 686, 690, and 691	
Responsible Regulator:	U.S. Department of Education	
BYU–Hawaii Responsible Officer:	Vice President for Academics	
	Updated: October 2013	Updated By: TDS
	Version 2.0	Effective Date: 7/1/2011, 7/1/2012

PURPOSE

In 2010, the U.S. Department of Education issued rules on program integrity to create heightened standards which institutions of higher education must meet in order to receive federal student financial aid.¹ These rules were amended under the Higher Education Act and are primarily designed to ensure only eligible students and institutions receive federal student financial aid, to provide accurate information to students about the nature of the educational programs in which they enroll, and to prevent misrepresentations and improper incentives in the student recruitment process.²

HISTORY

On October 29, 2010, the Department of Education (ED) released final rules on fourteen topics pertaining to institutions of higher education.³ The rules were published in two parts—one addressing program integrity issues in general, and the other establishing an approval process for institutions offering educational programs leading to gainful employment.⁴ One of the fourteen issues—determining whether nondegree educational programs prepare students for gainful employment—was only partially addressed by the final rules. On June 13, 2011, following public hearings, ED released additional rules on gainful employment.⁵

Program integrity rules came largely in response to the rapidly expanding for-profit education sector and are primarily targeted at vocational schools and for-profit colleges and universities.⁶ However, the regulations also apply to and affect all higher education institutions that receive Title IV funds for student financial aid.⁷

APPLICABILITY TO BYU–HAWAII

As a recipient of Title IV funds from the federal government, BYU–Hawaii is subject to the program integrity rules.⁸ As a non-profit educational institution, BYU–Hawaii is only subject to the gainful employment requirements inasmuch as it offers nondegree educational programs (including certificate programs separate from a degree), teacher certification programs, and comprehensive transition programs for intellectually disabled students.⁹

¹ Program Integrity Issues, 75 Fed. Reg. 66,832 (Oct. 29, 2010) (codified at 34 C.F.R. pts. 600, 602, 603, 668, 682, 685, 686, 690, 691).

² See *id.* at 66,835.

³ *Id.* at 66,832; see also NACUA Notes, U.S. Dep’t of Educ. Program Integrity Rules—Part 1 (June 23, 2011), available at <https://assets.system.tamus.edu/files/legal/pdf/NACUA%20Notes%20Part%201%20Program%20Integrity%20Rules%20TOPIC.pdf>.

⁴ 75 Fed. Reg. 66,831; Program Integrity: Gainful Employment-New Programs, 75 Fed. Reg. 66,665 (Oct. 29, 2010).

⁵ Program Integrity: Gainful Employment-Debt Measures, 76 Fed. Reg. 34,385 (June 13, 2011) (codified at 34 C.F.R. pt. 668).

⁶ 75 Fed. Reg. 66,835.

⁷ See 34 C.F.R. §§ 600.1, 668.1.

⁸ See *id.*

⁹ U.S. Dep’t of Educ., Dear Colleague Letter on Implementation of Regulatory Requirements Related to Gainful Employment Programs 3 (Apr. 20, 2011), available at <http://ifap.ed.gov/dpccletters/GEN1110.html>.



REQUIREMENTS

The program integrity rules require higher education institutions to take certain actions and refrain from other actions as discussed below:

State Authorization

An institution must be legally authorized to provide post-secondary education by the state in which it is physically located.¹⁰ This means the state must have a process to review and act on complaints concerning the institution.¹¹ The institution must provide students or prospective students with contact information for filing complaints with its accreditors, state licensing entity, and any other relevant officials or agencies.¹²

Additionally, an institution must be established by name in the state by falling into one of three categories—(1) institutions established by charter, statute, constitutional provision, or other official state action that identifies the institution by name and affirms that it may provide post-secondary education;¹³ (2) institutions authorized within the state either to conduct business or to operate as a nonprofit charitable organization and licensed by name to offer postsecondary education;¹⁴ or (3) institutions authorized by name to offer postsecondary education by the federal government or certain Native American tribes.¹⁵ Institutions in the first category may be exempted from state approval or licensure requirements if they either (a) are accredited by an accreditor recognized by ED or (b) have been in operation for at least twenty years.¹⁶ “Religious institutions,” defined as institutions owned and operated by a religious organization that grants “only religious degrees and certificates”¹⁷ are excluded from state authorization requirements.¹⁸

Misrepresentation

Under the law, an institution of higher education may not substantially misrepresent an educational program, financial charges, or graduate employability.¹⁹ Federal regulations substantially broaden the definition of “misrepresentation” and expand the list of persons whose statements can constitute institutional misrepresentations that will result in one or more of a new list of potential sanctions.²⁰ First, the definition of “misrepresentation” is expanded from prohibiting any “false, erroneous, or misleading statement” to include “any statement that has the likelihood or tendency to deceive.”²¹ Such statements may be “made in writing, visually, orally, or through other means.”²² In addition, prohibited misrepresentations can be statements by the institution, any of its representatives, or any other entity

¹⁰ 34 C.F.R. §§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9.

¹¹ *Id.* § 600.9(a)(1).

¹² *Id.* § 668.43(b).

¹³ *Id.* § 600.9(a)(1)(i)(A).

¹⁴ *Id.* § 600.9(a)(1)(ii).

¹⁵ *Id.* § 600.9(a)(2).

¹⁶ *Id.* § 600.9(a)(1)(i)(B).

¹⁷ *Id.* § 600.9(b)(2) (giving examples of religious degrees).

¹⁸ *Id.* § 600.9(b)(1).

¹⁹ 20 U.S.C. § 1094(c)(3)(A).

²⁰ *See id.* § 1094(c)(3); 34 C.F.R. §§ 668.71-668.74.

²¹ 34 C.F.R. § 668.71(c). *See also* 34 C.F.R. §§ 668.72-668.74 (providing more specific examples of the types of information that institutions must clearly present without misrepresentations). Previously, the regulations also prohibited statements that were likely or intended to *confuse*. However, a judge found that confusing statements were beyond the scope of the statute’s prohibition on misrepresentation, and the provision prohibiting confusing statements was removed in September 2013. *See Ass’n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 452 (D.C. Cir. 2012); Program Integrity Issues, 78 Fed. Reg. 57,798, 57,799 (Sept. 20, 2013) (to be codified at 34 C.F.R. § 668.71(c)).

²² 34 C.F.R. § 668.71(c).



Brigham Young University–Hawaii Office of Compliance & Ethics Research Memo Program Integrity Rules

with which the institution has made an agreement to provide educational programs.²³ Such misrepresentations violate federal regulations if they are made, directly or indirectly, “to a student, prospective student or any member of the public, or to an accrediting agency, to a state agency, or to the Secretary.”²⁴ If the ED Secretary finds that an institution has engaged in misrepresentation, ED may revoke the institution’s program participation agreement or limit the institution’s participation in Title IV programs if the program has been only provisionally certified.²⁵ ED may also react to misrepresentation by an eligible institution by denying participation applications made on behalf of the institution, or initiating a proceeding against the institution.²⁶

Incentive Compensation

Institutions must not provide any commission, bonus, or other incentive payment that is based “directly or indirectly” upon securing enrollments or awarding financial aid to anyone involved in student recruitment, admission activities, or decisions regarding awards of Title IV funds.²⁷ Although federal regulations previously contained twelve “safe harbors,” or arrangements institutions could make without violating the ban on incentive compensation (e.g., small non-cash gifts, incentive compensation for Internet-based activities, etc.), the program integrity rules eliminate all safe harbors.²⁸ Importantly, the rules do not allow annual salary increases for employees working in student enrollment or financial aid if the raises are related in any way to success in securing enrollments or awarding financial aid.²⁹ It is likewise not permissible for athletic coaches to receive any type of bonus for enrolling, retaining, or graduating student athletes.³⁰ Such activities violate the broad definition of “[c]ommission, bonus, or other incentive payment” included in the rules.³¹ To avoid ambiguity, the rules also include definitions for “securing enrollments or the award of financial aid” and “entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid.”³²

Credit Hour Definition

In order to establish conformity between federal financial aid applicants at different institutions, the federal regulations set forth a standard definition of a “credit hour.”³³ A credit hour is a minimum of one hour of classroom instruction and at least two hours of out of class work each week for approximately fifteen weeks for a semester or the equivalent amount of work over a different amount of time.³⁴ As part of their periodic reviews of the institution, accrediting agencies and state approval agencies must evaluate the accuracy of the institution’s assignment of credit hours.³⁵ Institutions that measure student progress in clock hours must use the following clock-to-credit-hour conversion rate: one semester/trimester credit hour must include thirty-seven and one-half clock hours of instruction and

²³ *Id.* § 668.71(b).

²⁴ *Id.* § 668.71(c).

²⁵ *Id.* § 668.71(a). While provisionally certified institutions may have their program participation agreements summarily revoked by ED, ED must afford procedural protections to institutions that have been fully certified before their program participation agreements may be terminated. *Ass’n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 450-51 (D.C. Cir. 2012); Program Integrity Issues, 78 Fed. Reg. at 57,798-99 (Sept. 20, 2013).

²⁶ *Id.* § 668.71(a).

²⁷ 20 U.S.C. § 1094(a)(20); *id.* § 668.14(b)(22)(i) (excluding recruitment of foreign students). These employees may receive merit-based compensation, but this cannot be related in any way to securing enrollments or awarding financial aid. *See id.* § 668.14(b)(22)(ii).

²⁸ 75 Fed. Reg. 66,832, 66,873 (Oct. 29, 2010).

²⁹ 34 C.F.R. § 668.14(b)(22)(i).

³⁰ *Id.* § 668.14(b)(22)(i)-(iii); see also 75 Fed. Reg. 66,831, 66,874 (clarifying that the rules apply to recruiting by athletic coaches).

³¹ 34 C.F.R. § 668.14(b)(22)(iii)(A).

³² *Id.* § 668.14(b)(22)(iii)(B), (C).

³³ *Id.* § 600.2.

³⁴ *Id.*

³⁵ *Id.* §§ 602.24(f), 603.24(c).



Brigham Young University–Hawaii Office of Compliance & Ethics Research Memo Program Integrity Rules

one quarter credit hour must include at least twenty-five clock hours.³⁶ Institutions may use direct assessment of student learning, such as through projects, performances, or presentations, but must demonstrate equivalency to credit or clock hours.³⁷ Thus, an equivalent amount of work is required to award credit hours for activities such as lab work, internships, practica, and studio work.³⁸

Retaking Coursework

In order for institutions to better determine students' enrollment status for purposes of Title IV funding, the definition of "full-time student" has been revised. Whereas the previous definition described a full-time academic workload as any combination of courses, work, research, or special studies recognized by the institution, the new regulations clearly state that repeated coursework may be used to determine a student's workload.³⁹

Written Arrangements

Two institutions may enter into an agreement with each other to provide parts of the educational program to students.⁴⁰ In such case, both institutions that enter into the agreement must meet eligibility requirements set forth in the definition of an "institution of higher education."⁴¹ If two or more institutions who share common ownership enter into a written agreement to provide parts of an educational program to students, the institution that grants the degree or certificate must provide more than fifty percent of the program.⁴² Institutions must make any information on written arrangements available to enrolled students and prospective students.⁴³

Satisfactory Academic Progress

Institutions must establish standards for measuring the satisfactory academic progress of students who are eligible to receive Title IV funds.⁴⁴ An institution's policy on satisfactory academic progress must do the following:

- Be at least as strict as the institution's policy towards students who do not receive federal aid;
- Consistently apply to all types of students (e.g. full-time student, part-time student);
- Provide that academic progress will be evaluated at the end of each payment period;
- Specify that students must achieve a GPA of at least a "C" or its equivalent at each evaluation;
- Specify the pace at which students must progress through their educational program;
- Specify how incompletes, withdrawals, repetitions, or transferring credits will affect a student's GPA and pace of completing their program; and,
- Describe the consequences for students who do not meet satisfactory academic standards and the time at which Title IV funds will be withheld from them.⁴⁵

³⁶ *Id.* § 668.8(l)(1). Conversion rates may allow for fewer hours of instruction time so long as combined out of class and in class work meets the requirements and instruction is no less than thirty hours. *See id.* § 668.8(l)(2).

³⁷ *See id.* § 668.10.

³⁸ *Id.*

³⁹ *Id.* § 668.2. This "retaking" rule does not include more than one retaking of a previously passed course, or the retaking of a previously passed course due to a student failing in other coursework. *See id.* § 668.2.

⁴⁰ *Id.* § 668.5.

⁴¹ *Id.* §§ 668.5(a), 668.8(c).

⁴² *Id.* § 668.5(a)(2).

⁴³ *Id.* § 668.43(a)(12).

⁴⁴ *Id.* § 668.34(a).

⁴⁵ *Id.*



The institution's policy must also let students know how to appeal any changes to their eligibility and how to reestablish lost eligibility.⁴⁶

High School Diploma

Institutions receiving Title IV funds must develop and follow procedures to evaluate the validity of a student's high school completion.⁴⁷ If an institution or ED has reason to believe that the high school diploma of an applicant is not valid or was obtained illegitimately, Title IV funds may be withheld.⁴⁸

Ability to Benefit

Students who did not receive a high school diploma can become eligible for Title IV aid if they demonstrate their "ability to benefit" by completing six credit hours at the institution or the equivalent.⁴⁹ The rules also set forth a broad set of definitions and guidelines for administering and gaining approval for Ability to Benefit (ATB) tests for students without a high school diploma who are trying to establish eligibility to receive federal funds.⁵⁰

Withdrawal

When a student receiving Title IV funds withdraws from an institution during a payment period or enrollment period, the institution must determine the amount of funds the student earned as of his or her withdrawal date.⁵¹ For students enrolled in term-based programs, students are considered to have withdrawn if they do not complete all the days in a period of enrollment for a program based on credit hours or all the clock hours in a period of enrollment for a program based on clock hours.⁵² Students in nonterm or nonstandard-term programs are considered withdrawn if they are not scheduled to take another course for more than forty-five days after the end of the module the student stopped attending.⁵³

Taking Attendance

If an institution is required to take attendance, it must use its attendance records to determine the date of students' withdrawals for calculating the return of Title IV funds.⁵⁴ An institution must take attendance if (1) an outside entity such as an accrediting agency or state agency requires it, (2) the institution has internal requirements that its instructors take attendance, or (3) the institution or an outside entity has a requirement that can only be met by taking attendance.⁵⁵

Verifying and Updating Student Aid Information

An institution is responsible to verify the information submitted by applicants for subsidized student financial assistance programs.⁵⁶ Institutions "must establish and use written policies and procedures for verifying an applicant's FAFSA information" that include the following:

⁴⁶ *Id.* § 668.34(a)(9)-(10).

⁴⁷ *Id.* § 668.16(p).

⁴⁸ *Id.* § 668.11 (establishing "standards that an institution must meet in order to participate in any Title IV HEA program").

⁴⁹ *Id.* § 668.32(e)(5).

⁵⁰ For a full discussion of these changes, see *id.* §§ 668.141-668.156.

⁵¹ *Id.* § 668.22(a)(1).

⁵² *Id.* § 668.22(a)(2)(i)(A)-(B).

⁵³ *Id.* § 668.22(a)(2)(i)(C) (noting an exception for an "approved leave of absences").

⁵⁴ *Id.* § 668.22(b).

⁵⁵ *Id.* § 668.22(b)(3)(i).

⁵⁶ *Id.* § 668.51(a).



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Program Integrity Rules

- The time period within which an applicant chosen for verification must provide requested documentation,
- The consequences of providing late documentation,
- The method by which an institution informs applicants of verification results and any consequent changes in the assistance to be awarded,
- The procedures for correcting erroneous FAFSA information
- The procedures for referring information to the Office of Inspector General about applicants suspected to have engaged in fraud or criminal misconduct related to their application, and
- A provision that the institution will inform applicants of the documentation needed to satisfy verification requirements and any other requirements or deadlines that the applicant must keep.⁵⁷

The regulations require institutions to verify all applicants for Title IV financial aid who are chosen by the ED Secretary.⁵⁸ Each year, ED will specify the FAFSA information that may be verified.⁵⁹ The federal regulations detail the specific documents that an institution must obtain from an applicant when verifying certain information.⁶⁰

If an applicant's dependency status changes within the award year, the FAFSA information must be updated unless this change is due to a change in marital status.⁶¹ If applicants are selected for verification of household size or number in college, any status change must be updated by the time of verification.⁶² An institution must report any changes on a student's FAFSA to ED, whether or not the changes result from verification or a student revision, and recalculate the student's disbursements.⁶³

There is also a cap on the amount of excess cash from undisbursed federal aid that an institution may hold.⁶⁴

Disbursements

Institutions must provide a way for Federal Pell Grant-eligible students to obtain or purchase the required books and supplies by the seventh day of a payment period even if the Title IV funds are not yet available, provided that the student meets disbursement requirements and the student would have a credit balance if the funds were dispersed.⁶⁵

Gainful Employment

The gainful employment rules apply only to certificate or nondegree programs of at least one year, or vocational schools.⁶⁶ According to clarification from ED, gainful employment (GE) programs include "all nondegree educational programs offered by public and nonprofit institutions."⁶⁷ Nondegree programs include teacher certification programs (if the certification is not attached to a degree program) as well as comprehensive transition programs for students with disabilities.⁶⁸ Programs leading to a degree, and

⁵⁷ *Id.* § 668.53(a)-(b).

⁵⁸ *Id.* §§ 668.54(a)(1), 668.56(b).

⁵⁹ *Id.* § 668.56(a).

⁶⁰ *See id.* § 668.57 (listing acceptable documentation).

⁶¹ *Id.* § 668.55(a).

⁶² *Id.* § 668.55(b).

⁶³ *Id.* § 668.59.

⁶⁴ *Id.* § 668.166.

⁶⁵ *Id.* § 668.164(i).

⁶⁶ *Id.* §§ 668.7(a)(2)(i)(A), 668.8(c)(3), (d).

⁶⁷ U.S. Dep't of Educ., Dear Colleague Letter on Implementation of Regulatory Requirements Related to Gainful Employment Programs 2 (Apr. 20, 2011), available at <http://ifap.ed.gov/dpcletters/GEN1110.html>.

⁶⁸ *Id.*



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Program Integrity Rules

preparatory courses of study necessary for one to enroll in other programs, are not considered GE programs.⁶⁹

To qualify for Title IV funds, institutions with GE programs are subject to substantial reporting and disclosure requirements.⁷⁰ A program “is considered to provide training leading to gainful employment” if the program’s annual loan repayment rate is at least thirty-five percent; its loan repayment rate is less than or equal to thirty percent of discretionary income, or twelve percent of annual earnings; or the data that would be used to assess the program are not available to the ED Secretary.⁷¹

COMPLIANCE CALENDAR

Institutions subject to the gainful employment rules must report information annually (no earlier than September 30, and no later than a date established by the ED Secretary in the Federal Register).⁷²

STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
http://www.ed.gov/news/press-releases/department-education-establishes-new-student-aid-rules-protect-borrowers-and-tax	Department of Education: Press Release and Summary of the Final Rule
http://www.federalregister.gov/articles/2010/10/29/2010-26531/program-integrity-issues	Department of Education: Full-text of the Final Rule
http://www.federalregister.gov/articles/2010/10/29/2010-27395/program-integrity-gainful-employmentnew-programs	Department of Education: PDF of current gainful employment requirements for new program approval
http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html	Rulemaking process for the Program Integrity rules
http://aspe.hhs.gov/poverty/	Department of Health and Human Services: Data for calculating gainful employment requirements.
https://www.federalregister.gov/articles/2011/06/13/2011-13905/program-integrity-gainful-employment-debt-measures	Department of Education: Full text of final rule on gainful employment debt measures.

⁶⁹ *Id.*

⁷⁰ 34 C.F.R. § 668.6.

⁷¹ *Id.* § 668.7(a)(1)(i)-(iii); *see also id.* § 668.7(b) (providing the formula for calculating the loan repayment rate); *d.* § 668.7(a)(2)(vi) (giving the definition of discretionary income).

⁷² *Id.* § 668.6(a)(2)(i)(C).