

## **FEDERAL BAN ON INCENTIVE COMPENSATION FOR STUDENT RECRUITING ACTIVITIES OR THE AWARDING OF FEDERAL FINANCIAL AID**

### **Introduction**

Section 487 (a)(20) of the Higher Education Act (HEA) prohibits the University from providing incentive compensation to employees or third party entities for their success in securing student enrollments or the awarding of Title IV Higher Education Act program funds.

### **What is the reason for the law?**

This strict ban on providing incentive compensation for performing these activities is part of a larger set of Program Integrity Rules issued by the Department of Education (DOE) in 2010 with an effective date July 1, 2011. These rules cover a broad array of issues intended to promote integrity in higher education programs by protecting students as consumers and by stemming perceived abuses of Title IV program funds perpetuated by a minority of institutions, mainly for-profit schools and other entities. The rules apply to all Title IV eligible institutions.

### **What do I need to know about the Incentive Compensation Ban?**

There are two primary considerations that employees should understand in applying this rule.

- 1) What compensation is considered to be incentive compensation.
- 2) Which activities are subject to the ban.

### **What is considered incentive compensation?**

Incentive compensation includes commissions, bonus payments, merit salary adjustments, and promotion decisions. Payments made to recruiters based on student academic performance is considered incentive compensation.

Excluded from incentive compensation is a fixed salary or wage. Adjustments to a fixed salary or wage are permitted when adjustments are related to cost of living, length of service, OR for the performance factors identified in this guidance as long as only one salary adjustment a year is made.

Other exclusions from incentive compensation include payments to faculty based on the size of classes taught or on student achievement.

### **What activities are covered by the ban?**

These rules prohibit the University from providing incentive compensation for only two activities, these are:

1. recruiting or admissions activities related to success in securing student enrollments, and,
2. making decisions regarding the awarding of Title IV HEA program funds in the awarding financial aid.

Some examples of covered activities for which incentive compensation is prohibited include, but are not limited to:

- recruitment information targeted to individuals,
- recruiting solicitations to individuals,
- contacting prospective students ,
- making student enrollment or Title IV aid decisions,
- aiding students in completing enrollment applications, and
- completing financial aid applications on behalf of prospective students.

Examples of activities that are exempt from the ban on incentive compensation as long as the employee is not also engaged in covered activities include:

- advertising or marketing activities that provide college or program information to the public or groups of potential students,
- collecting contact information, and
- providing student support services after the disbursement of financial aid such as career counseling, tutoring, online course support.

Remember that only incentive compensation payments made to individuals for the covered activities are subject to the ban.

### **Compliance Guidance FAQs**

#### ***Are there any exceptions to the rules?***

These rules do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

#### ***What employees do these rules apply to?***

These rules apply to positions performing the restricted activities. Certain University departments such as Admissions Offices or Student Financial Services will have a number of employees subject to the ban since these departments typically perform covered activities. These restrictions may apply to higher-level employees with responsibilities for the covered activities.

Additionally, these rules apply to ANY employee in any department that is directly engaged in recruiting students. Employees may not be compensated based on their success in enrolling students. Special care should be taken when reviewing the performance of employees that may perform recruiting activities as a nominal part of their work to ensure that compensation decisions are not made in relation to the success of these activities in securing student enrollment.

Generally, these rules do not apply to senior level managers and executive employees that are only involved in the development of policy and do not engage in individual student contact related to the restricted activities.

***As a supervisor how can I assess the performance and determine salary adjustments for an employee whose responsibilities may include the restricted activities?***

There are a number of standard evaluative factors that can be used to assess the performance of these employees in relation to the restricted activities, including:

- job knowledge (knowledge of University programs, policies and guidance),
- professionalism (providing quality customer service, respecting customer privacy, and demonstrating proper etiquette with students and co-workers),
- analytic ability (ability to troubleshoot and solve problems),
- communication skills (written, verbal),
- use of technology (ability to use available technology available to carry out duties),
- dependability (follow through with customers, punctuality, low absenteeism),
- customer evaluations (feedback from students, parents, co-workers or other individuals/organizations the individual works with), and
- initiative (displays positive attitude).

***Can merit raises or bonuses be given to employees performing these restricted activities?***

Yes, as long as it is demonstrated through employee evaluations that payments are driven by the assessment of the evaluative factors noted above in relation to the covered activities and not related to success in securing student enrollments or awarding financial aid. Employees with additional duties unrelated to the covered activities may be evaluated on their performance of those additional duties.

***Do these rules apply to Athletics personnel?***

Yes, however, bonus or other incentive payments to athletic personnel are typically permitted for successful athletic programs including compensation for a successful athletic season, team academic performance, or other measures of team success.

***What about agreements with third party vendors?***

These restrictions extend to payments to third party entities; however, specific rules may apply if a vendor is providing bundled activities that include covered as well as other activities. Please review third party agreements to ensure they do not include incentivized payments for the covered activities and request assistance from the Office of General Counsel before authorizing any third party agreements that may contain these activities.