

Department of Education Adopts New Regulations Regarding Incentive Compensation

Article By:

Robert W. Mulcahy

The **Department of Education** has adopted new regulations with regard to **incentive compensation** that will be effective July 1, 2011. These new regulations interpret the **Higher Education Act's** prohibition against incentive compensation payments to employees involved in recruitment and financial aid activities. These new regulations eliminate all safe harbor compensation practices in favor of a broader interpretation of the prohibition against incentive compensation payments to employees involved in recruitment and financial aid activities. All profit and not-for-profit colleges must scrutinize their compensation practices to ensure they comply with these new regulations.

The Department of Education has issued [detailed guidance](#) on compliance with its incentive compensation regulations. The guidance on the topic of incentive compensation begins at page eight. As the guidance explains, “[T]he Department considers payments to persons or entities that undertake or have responsibility for recruitment and decisions related to securing financial aid as subject to the incentive compensation ban even if their work also includes other activities.” Persons or entities who are not involved at all in recruitment or securing financial aid are generally not subject to the ban. The regulations address what are covered activities and what types of payments are prohibited.

As the July 1, 2011, effective date of the regulations approaches, college administrators should become familiar with the regulations and the Department's enforcement position. Michael Best is in the process of assisting several clients with regard to these new regulations. We can help your institution identify to whom these regulations apply and what activities are subject to the ban on incentive compensation. We have also developed strategies to align performance appraisal practices and compensation systems that will assist colleges in complying with the Incentive Compensation ban.

©2025 MICHAEL BEST & FRIEDRICH LLP

National Law Review, Volume I, Number 178

Source URL: <https://natlawreview.com/article/department-education-adopts-new-regulations->

[regarding-incentive-compensation](#)