Cooley

November 18, 2015

Earlier this month, the US Department of Education ("ED" or the "Department") announced a number of changes to the so-called "cash management" regulations that govern institutional arrangements with financial account providers and will take effect on July 1, 2016. Embedded within the announcement and publication of revised final rules was an amendment that has gotten little public attention despite significant Title IV implications. Specifically, the announcement confirmed that the Department has abandoned a controversial and confusing element of the clock and credit hour rules at 34 C.F.R. § 668.8 that was first adopted as part of the 2010 Program Integrity regulatory package and went into effect on July 1, 2011.

The Department's 2010 rule changes created a new definition of credit hour for certain programs, revised the requirements for other programs subject to a prior definition, and created a third category of programs that must award federal financial aid on a clock-hour basis regardless of state and accreditor approval in credit hours. With regard to the third category, a program must be considered a clock hour program if a state requires a program to be measured in clock hours in order to receive state approval or licensure, if a student must complete clock hours in order to apply for licensure or authorization to practice his or her intended occupation, if the credits awarded for the program are not in compliance with the federal definition of a credit hour, or if the institution does not provide the clock hours that are the basis for each course in the program and generally requires attendance in the clock hours that are the basis for the credit hours awarded.[1]

The Department acknowledged on several occasions, including the recent announcement of the elimination of the rule, that the 2010 clock and credit hour rule changes generated confusion both within the agency and among institutions. And, because ED's interpretation and application of the subjective standards can occur long after the programs have gotten underway, schools with highly regulated programs with state-imposed clock hour minimums could face significant (and retroactive) liabilities due to differences in how institutions must disburse financial aid for clock hour versus credit hour programs.[2]

Fortunately, participants in the 2013-2014 Program Integrity Negotiated Rulemaking sessions reached tentative agreement on a proposal to eliminate the clock-hour triggers. In May 2015, the Department issued language proposing to amend 34 C.F.R. § 668.8(k), which it published as a Final Rule on October 30, 2015, in time for the revisions to take effect next summer.[3]

The revised rule will eliminate the section of the regulations that forced clock-hour treatment despite state and accreditor approvals in clock hours and noted that the Department does not "wish or intend to interfere with State requirements relating to program delivery or the number of credit or clock hours a State recognizes or requires for its purposes."[4] Furthermore, by abandoning the rule that certain institutional attendance requirements can make a program a clock-hour program for federal financial aid purposes, the Department has opted to again rely substantially on institutions and their accreditors to make the determination about whether any given program should be measured in clock hours or credit hours for federal financial aid purposes, independent of state requirements. In sum, the revisions confirmed that the Department believes that the existing credit hour conversion methodologies are sufficient in and of themselves to protect the integrity of the Title IV, federal student aid programs.

Please do not hesitate to contact us with any questions.

Notes

1. 34 C.F.R. § 668.8(k)(2). Note that 34 C.F.R. § 668.8(k)(3) makes an exception for programs otherwise subject to 34 C.F.R. § 668.8(k)(2)(i)(A) or (B) if the only relevant state approval or licensure requirement is that a "limited component of the program must include a practicum, internship, or clinical experience component … must include a minimum number of clock hours."
2. Note that these rule changes do not impact programs that are already offered exclusively in clock hours, consistent with state and accreditor approvals.
3. 80 Fed. Reg. 28484 (May 18, 2015); 80 Fed. Reg. 67126 (Oct. 30, 2015).
4. 80 Fed. Reg. 28513 (May 18, 2015).

This content is provided for general informational purposes only, and your access or use of the content does not

create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Jay Vaughan Washington, DC	jvaughan@cooley.com +1 202 776 2031
Naomi May San Diego	nmay@cooley.com +1 858 550 6025

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.