INTRODUCTION:

This NACUANOTE is Part II of a three-part series on the U.S. Department of Education’s (“ED”) final regulations on the integrity of federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended. [1] Although largely directed toward for-profit postsecondary education institutions, [2] these “program integrity rules” have significant implications for nonprofit and public higher education institutions as well.

Part I of the series addressed the new rules regarding state authorization, incentive payments, and misrepresentation. [3] This Note, Part II of the series will address the new federal definition of credit hour, as well as ED’s new disclosure and reporting requirements. A final Note will cover ED’s new regulations on “gainful employment,” which were published on June 13, 2011. [4]

DISCUSSION:

Credit and Clock Hours [5]

ED relies on accrediting agencies to make judgments about program length and the amount of credit granted for course work. The credit hour is used for Title IV purposes to define an eligible program and an academic year as well as to determine enrollment status and the amount of Title IV aid that an institution may disburse per payment period. Current regulations do not define “credit hour.” The program integrity regulations define credit hour and enhance accreditor obligations with respect to reviewing credit hour assignments. The new regulations also describe the circumstances under which a program must be treated as a clock hour program for Title IV purposes, and they revise the formula that certain undergraduate programs must use to convert the number of clock hours offered to the appropriate number of credit hours used for Title IV aid calculations.

What is the new definition of “credit hour”?

Under the new definition, “credit hour” means “an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than”:

1. One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately 15 weeks for one semester or trimester hour of credit, or 10 to 12 weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or
2. At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours. [6]

ED has explained that this “standard measure will provide increased assurance that a credit hour has the necessary educational content to support the amounts of Federal funds that are awarded to participants in Federal funding programs and that students at different institutions are treated
equitably in awarding of those funds." [7]

**Do the regulations define “one hour” for purposes of the credit hour definition?**

ED declined to define “one hour” because “the primary purpose [of the definition],” according to ED, “is to provide institutions with a baseline, not an absolute value, for determining reasonable equivalencies or approximations for the amount of academic activity” that is specified in the definition. [8]

**What is the role of accreditors with respect to the new definition of credit hour?**

The new regulations require institutional accreditors to review the reliability and accuracy of an institution’s credit-hour assignments, including through review of the institution’s policies and procedures for credit-hour assignment and application of those policies and procedures. [9] An accreditor must take appropriate actions to address an institution’s credit hour deficiencies and must notify ED if it finds systemic noncompliance or significant noncompliance in one or more programs. [10]

**Does the new credit hour definition apply to asynchronous online courses?**

The new credit hour definition applies to all courses and programs for purposes of Title IV. ED has emphasized that it intends the credit hour definition to be flexible and not to require seat time. [11] With respect to asynchronous online courses, ED has explained that an institution must determine the amount of student work expected in each course in order to achieve the course objectives and must assign a credit hour based on at least an equivalent amount of work as represented by the credit hour definition. [12] The same principle applies to any course offered by the institution.

**What is the effective date of the new credit hour definition?**

The credit hour definition and related requirements are effective July 1, 2011. ED has indicated that for the 2011-2012 award year, it will consider an institution to be making a good faith effort to comply if the institution is in the process of complying with the credit hour provisions. ED will consider such good faith effort when reviewing an institution’s compliance with the regulations. [13]

**Under what circumstances must an institution treat a program as a clock hour program, instead of a credit hour program, for federal student financial aid purposes?**

Historically, the determination of whether a program is measured in clock hours or credit hours has been left to the discretion of the institution, subject to the limitations and approval requirements imposed by accreditors and state agencies. [14] ED has long been concerned that such discretion, combined with the amorphous nature of a “credit hour,” has created the potential for institutions to “exaggerate[] the educational quantity of their educational programs.” [15]

The new regulations deem certain programs to be clock-hour programs, regardless of how the institution wishes to measure student progress for academic purposes. Under the new regulations, a program is considered to be a clock-hour program for Title IV purposes if the program is required to measure student progress in clock hours when receiving federal or state approval or licensure to offer the program; completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue; the credit hours awarded for the program are not in compliance with the new definition of a credit hour; or the institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and the institution requires attendance in the clock hours.
that are the basis for the credit hours awarded. The new regulations clarify that a program will not be deemed to be a clock hour program based solely on “a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.”

**What changes were made to the clock-to-credit hour conversion formula that applies to certain undergraduate programs?**

An institution must use a clock-to-credit hour conversion formula to determine whether a program is eligible for Title IV purposes if (1) the program is an undergraduate program that is offered in credit hours and is less than two academic years in length; and (2) no course within the program is acceptable for full credit toward a degree program that is offered by the institution and is at least two academic years in length. The conversion formula is used to determine whether such a credit-hour program has an appropriate minimum number of clock hours of instruction for each credit hour it claims. The new regulations modify the formula to provide two conversion standards depending on whether additional work outside the classroom is required. For example, the minimum standard requires 37.5 clock hours of instruction for every semester credit hour (instead of the current standard of 30 clock hours of instruction for every semester credit hour), but if outside work is required and certain criteria are met, the standard requires 30 clock hours of instruction for every semester credit hour.

**What steps should an institution be taking to comply with the new credit and clock hour requirements by July 1?**

An institution should inventory its programs and assess whether each program must be treated as a clock hour program under the new regulations or whether the program may be treated as a credit hour program. An institution should develop policies and procedures for reviewing programs and making credit hour assignments that are consistent with the new credit hour definition. Based on such policies and procedures, an institution should review its programs and make any appropriate adjustments to its credit hour assignments. An institution should assess its compliance with the revised clock-to-credit hour conversion formula, to the extent applicable, and make any appropriate program adjustments.

**Disclosure and Reporting Requirements**

The program integrity regulations impose new disclosure and reporting requirements on institutions. Those disclosure and reporting requirements relate to gainful employment programs, certain written arrangements, and state authorization matters.

**Gainful Employment**

Title IV-eligible nondegree and vocational programs offered by nonprofit and public institutions must lead to gainful employment in a recognized occupation. With limited exceptions, all Title IV-eligible degree, nondegree, and vocational programs offered by proprietary institutions must lead to gainful employment in a recognized occupation. The program integrity regulations impose reporting and disclosure requirements with respect to so-called gainful employment programs.

**What gainful employment program information must an institution disclose to prospective students?**

An institution must provide prominently on certain pages of its website and in its promotional materials the following information for each program that leads to gainful employment:
the occupations that the program prepares students to enter;
the on-time graduation rate for students entering the program (calculated using a new formula introduced in the final rule that compares the number of students who completed the program within “normal time” to the total number of students who completed the program during the most recently completed award year);
the cost of the program, including tuition and fees, books and supplies, and room and board;
the median loan debt incurred by students who completed the program as provided by ED (disaggregating median loan debt from (1) federal loans, (2) private education loans, and (3) institutional financing plans); and
the placement rate for students completing the program. Unlike the proposed rules, the final rules provide that this rate will be determined under a methodology to be developed by the National Center for Education Statistics, but, until that method is developed, an institution must report its placement rate only if its accreditor or state authorizing agency requires it to calculate such a rate. [21]

ED will calculate median loan debt for each institution based on the institution’s required report to ED, described below, and will supply such information to the institution for it to disclose. However, the first reports are not due to ED until October 1, 2011, and the first disclosures must be made by July 1, 2011. ED has indicated that institutions must calculate for themselves the median loan debt that must be disclosed to prospective students until ED begins to supply such data to institutions. [22]

ED plans to develop a disclosure form that institutions will be required to use when the form becomes available. [23]

By when must institutions make such disclosures to prospective students?

As noted above, an institution must make such disclosures by July 1, 2011 for the most recently completed award year. ED has explained that institutions may use information from the 2009-2010 award year for the disclosures that are required by July 1, 2011. The institution must update such information within a reasonable period of time after the 2010-2011 information becomes available. Institutions must follow the same approach for future award years. [24]

What is the gainful employment program information that an institution must report to ED?

Each year, an institution must submit the following information to ED:

- For each student enrolled in a program that leads to gainful employment:
  - identifying information about each student enrolled in the program;
  - if the student began the program during the award year, the ED Classification of Instructional Program (CIP) code of that program;
  - if the student completed the program during the award year, the name and CIP code of that program; the date the student completed the program; the amount the student received from private educational loans and institutional financing plans; and, unlike the proposed rule, [25] information on whether the student matriculated to a higher credentialed program at the institution or transferred to a higher credentialed program at another institution.
  - For each applicable program, by name and CIP code, the total number of students enrolled in the program at the end of each award year and identifying information about each student. [26]

How often must the institution report the information to ED?
Institutions must report the information annually. For information related to award years 2006-07 through 2009-10, institutions must report by October 1, 2011. Institutions must report information for subsequent award years no earlier than September 30 but no later than the date established by ED through notice in the Federal Register. If an institution is unable to supply all or some required information, it must provide an explanation to ED. [27]

**By what means do institutions report the information to ED?**

Institutions must use the existing Enrollment Reporting Process, which is the system institutions currently use to report student enrollment information to the National Student Loan Data System ("NSLDS"). ED has issued an NSLDS Gainful Employment User Guide to help institutions to prepare their systems to submit required information. [28]

**Written Arrangements**

Under current regulations, an institution may enter into a written arrangement with another institution or entity to provide part of an educational program. [29] ED regulations specify the conditions under which a program that is offered pursuant to such an arrangement is eligible for Title IV aid. [30] Current regulations contain no requirement that institutions provide information on such arrangements to enrolled or prospective students.

**What are the disclosure requirements related to written arrangements?**

As of July 1, 2011, the program integrity regulations require an institution to provide to current and prospective students the following information regarding any written agreements pursuant to which another institution or entity provides part of an educational program:

- the portion of the educational program the institution granting the degree or certificate is not providing;
- the name and location of the other institutions or organizations providing the portion of the program not offered by the institution granting the degree or certificate;
- the method of delivery of the portion not offered by the institution granting the degree or certificate; and
- the estimated additional cost to the student of enrolling in a program provided under the arrangement. [31]

The written arrangements disclosure requirement is included among existing Title IV consumer disclosure requirements. [32] Thus, disclosure must be made as part of those current disclosures.

**State Authorization**

As detailed in Part I of this series of Notes, the program integrity regulations impose new requirements on institutions with respect to disclosure of information regarding state authorization.

**What state authorization information are institutions required to disclose to prospective and current students?**

As of July 1, 2011, an institution must make available, upon request, to any enrolled or prospective student a copy of the documents describing the institution’s accreditation and its state, federal or tribal approval or licensing. In addition, the institution must provide students and prospective students with contact information for filing complaints with the institution’s accreditor and with its state approval agency and any other relevant state official or agency that would appropriately handle
By what means must an institution provide students and prospective students with contact information for filing complaints with relevant accrediting and state agencies?

The new disclosure requirement is included among existing Title IV consumer disclosure requirements. Thus, disclosure must be made as part of those current disclosures.

Other Program Integrity Topics

In addition to the issues covered in Parts I and II of this NACUANOTES series, the final rule on program integrity covers eight other topics relating to administration of Title IV programs and other aspects of institutions’ operations. They include:

- Verification of high school diplomas
- Eligibility of students for Title IV aid based on their “ability to benefit” from the education or training offered
- Student eligibility for Title IV aid when retaking coursework
- Satisfactory academic progress requirements for maintaining eligibility for Title IV aid
- Verification of information in students’ financial aid applications
- Timeliness and method of disbursement of funds to enable students who are eligible for Federal Pell Grants to obtain books and supplies
- Return of Title IV funds when a student withdraws from a term-based program in modules
- Return of Title IV funds when a student withdraws from an institution that takes attendance

Fully addressing each of these issues is beyond the scope of a NACUANOTE, but institutional officials with relevant responsibilities should familiarize themselves with these new rules and take steps to comply by July 1, 2011.

CONCLUSION:

ED’s final rules on program integrity have extensive implications for institutional operations, as evidenced by the issues raised in Parts I and II of this series. A forthcoming Part III will discuss ED’s new “gainful employment” regulations and the additional obligations they impose upon institutions. Beyond these program integrity regulations, ED has also announced a new rulemaking proceeding that will address teacher preparation programs, federal student loans, institutional reporting requirements, college completion, and President Obama’s proposed “First in World” grant competition. Institutions should therefore monitor that proceeding for relevant legal developments as well.

FOOTNOTES

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RESOURCES:

- **75 Fed. Reg. 66,832** (Oct. 29, 2010) (program integrity final rule)
- **76 Fed. Reg. 25,650** (May 5, 2011) (initiating rulemaking on teacher preparation programs, federal student loans, institutional reporting requirements, college completion, and President Obama’s proposed “First in World” grant competition)
- U.S. Department of Education, "Dear Colleague” Letter GEN-11-06 (Mar. 18, 2011) (credit hours)
- U.S. Department of Education, "Dear Colleague” Letter GEN-11-10 (Apr. 20, 2011) (gainful employment disclosure and reporting requirements)
- Gainful Employment Information webpage, including Frequently Asked Questions
- NSLDS Gainful Employment User Guide