**BISK EDUCATION**

**May 21, 2010**

Executive Summary

1. Bisk Education is a leading provider of online services for traditional, post secondary schools, including some of the most reputable universities in America. We work solely with regionally-accredited, not-for-profit institutions.

2. In our relationship with the universities, they maintain complete control of their traditional functions, such as: curriculum development and instruction, setting enrollment goals, admissions and credit evaluation, and financial aid evaluation and awarding. Their online operations mirror their traditional campus policies and procedures.

3. We provide assistance in the areas where they need help, such as: online learning technology, Internet marketing expertise, enrollment services, student retention, materials delivery and back office infrastructure. Cash-strapped and resource-challenged traditional universities count on us for the working capital and operational expertise they require to move their degree programs to the Internet in an effective and successful manner.

4. In effect, we level the playing field between traditional not-for-profit schools and the for-profit education companies who are dominant in the adult-learner online market, including taking a disproportionate share of the federal financial aid resources (e.g., the top five Pell grant recipients in 08-09 were all for-profit entities).

5. To secure our services, traditional universities use the longstanding, accepted methodology of tuition sharing as their compensation model. (A partial list of the many traditional, regionally accredited not-for-profit universities who currently participate in similar such arrangements is included in Tab 4.) Current Safe Harbor #12 approves third party services compensated via tuition sharing, including recruiting.

6. We do not wish to impede the Department of Education's efforts to revise regulations and address improper recruiting compensation practices in higher education. Their final re-draft of the incentive compensation Safe Harbors at the 2010 Neg Reg approved the concept of third party services such as ours, including recruiting, so long as it involves no inappropriate payment incentives. We are in complete agreement with this approach. However, the issue of tuition sharing as a compensation model was simply not addressed at the hearings.

7. While tuition sharing is a payment type and does not appear to be incentive compensation, because it was addressed in original Safe Harbor #12, the proposed rule's silence on the matter may create a potential grey area.

8. Such a regulatory grey area could result in confusion among traditional schools, and lead to the following risks:
- Loss of vital revenues for the active traditional universities who choose to curtail online operations
- Uncertainty for approximately 30,000 faculty and staff currently employed via these arrangements
- Chaos for an estimated 325,000 existing online students at traditional schools served by third parties
- Loss of opportunity for traditional schools, including those considering offering programs online, as well as the hundreds of thousands of potential students who would benefit from obtaining a valuable traditional degree
- Negative impact on President's plan to increase adult learner college graduates over the next ten years
- Marginal traditional schools will close or be acquired by for-profit entities

9. Proposed options to clarify this grey area:

a. Clearly state in the revised regulations, e.g., in the preamble, that "tuition sharing is not considered to be incentive compensation."
b. Add back the missing language from Safe Harbor #12: "Eligible institutions may compensate contractors via tuition sharing, if one of the services involves recruiting or admission activities, provided that the individuals performing the recruitment or admissions activities are not compensated in a manner that would be impermissible under the rules."

## Bisk Education Background

Bisk Education is a leading provider of online learning services for traditional post secondary schools, including some of the most reputable institutions in America. For over 38 years, Bisk has been a pioneer in the delivery of education at a distance. Beginning with our early adoption of emerging technologies to provide exam preparation and continuing education to accounting professionals, we have grown to become one of the nation's largest facilitators of online education. During the past 15 years, through our University Alliance Online division, we have partnered exclusively with select, regionally accredited, traditional not-for-profit universities to provide Associate's, Bachelor's and Master's degrees, and certificate (non-degree) programs 100% over the Internet. Our current academic partners include:

- The University of Notre Dame
- Villanova University
- The University of San Francisco
- Tulane University
- Florida Institute of Technology
- Dominican University (Chicago)
- University of Scranton
- Jacksonville University

Through our combined efforts with these fine institutions, their online programs have grown rapidly from inception to service thousands of active students today. In retaining Bisk, each academic institution remains solely responsible for its traditional functions: curriculum development, faculty and academic outcomes; admissions and transfer credit evaluation; defining enrollment and tuition; financial aid processing and awarding; academic advising; and the award of their accredited credential. The other important components necessary to design and deliver a viable online program are supplemented by Bisk.

Bisk works exclusively with non-profit universities that have strong academic traditions and reputations, and our goal is to facilitate the replication of those academic missions online. Unlike the large for-profit institutions, traditional schools are reluctant to move their offerings to the Internet because they typically lack the necessary experience, technical expertise and financial resources. As a result, they are at an increasingly significant disadvantage when it comes to reaching a diverse and evolving audience of students. Distance capabilities are essential to the long term survival of many of these institutions in America today, and the current fiscal crisis has only exacerbated the competitive gap. To put it simply, we level the playing field for the traditional schools. Each of our partner institutions gained the confidence and ability to offer an Internet version of their respected, classroom-based degrees and courses by leveraging Bisk's skilled online professionals, technical resources and financial commitment. As a result, our partners have been able to offer top quality distance education programs that match or exceed their ground-based counterparts, while sharing in immediate revenues, with minimal start-up costs and risk.

### Bisk University Alliance Online Division Corporate Capabilities

Course Technology and Instructional Design: Bisk has a proprietary course management system that is tailored to each specific program. Our staff instructional designers and technical developers work with faculty to develop an online curriculum that matches or exceeds the program offered on the ground. Streaming video, chat rooms, custom simulations, voice over IP solutions and more are all incorporated into the classroom, providing a rich environment for learning. Bisk handles the set up, hosting and management of the system from start to finish, allowing faculty to focus on what they do best: teaching. We also provide faculty training and online classroom best practices.

Marketing Services: Bisk makes a significant financial commitment to each partner program to meet their enrollment goals. We harness the full breadth of marketing channels on behalf of each unique brand: Internet display and search, print, direct mail, industry trade shows and corporate events. The vast experience, size and reach of our University Alliance marketing group allows our traditional university partners to compete with even the largest competitors in the online education marketplace. Our award winning in house ad agency includes dedicated artists, copywriters, brand and marketing managers, media buyers, search engine optimization and buying specialists, designers and technical experts, as well as compliance staff. This team creates everything from dedicated program websites to electronic and hard copy brochures, banners, annual catalogues, posters and promotional items. Our state of the art recruitment technology includes a proprietary real-time lead management system that handles thousands of requests a month.

In addition, Bisk has an exclusive arrangement with US News and World Report to manage their Education Directory Portal and Higher Education Advertising. We have established direct relationships with many of the Fortune 500 corporations to reach out directly to their vast pool of employees. And we have forged partnerships with numerous certifying organizations such as the Project Management Institute, Society for Human Resource Managers, National Contract Management Association, Institute for Supply Chain Management, International Institute of Business Analysis and many more.

Enrollment Services: Each of our partner schools has an exclusively dedicated, carefully trained team of Bisk program representatives who work with prospective students on behalf of the institution in accordance with all university policies. Prospects who wish to become applicants work closely with Bisk enrollment advisors to complete their applications and take their place in class. Once the institutions make an admissions decision, dedicated Bisk retention specialists become the student's "friend for life," to be there every step of the way through to graduation. Each team is supported by dedicated management, training resources, and quality assurance staff. This student management function, which employs cutting edge customer relationship management methods and software, is critical to recruitment and retention of adult learners for the institutions.

Customer Service and Accounting: We provide support for all non-academic administrative matters and student issues, beginning with enrollment through financial reconciliation each term. Our technical support team offers extended hours to faculty and students alike through voice, chat and e-mail. Our operations staff works directly with the students and with the institution. Our billing and collections department handles all payment issues and interfaces directly with the bursar and financial aid department.

Bookstore: Our large on-site warehouse and bookstore stocks all of the texts and materials, course guides and lecture media that students require to ensure they are able to obtain the right resources to participate in class, on time and up to date. We provide an important daily interface with the publishers and with academic staff, and ship thousands of packages worldwide every term.

Technology Integration: Beginning with our proprietary and custom-integrated online application system, we work with each academic partner to ensure seamless electronic exchange of information to simplify the loading and management of student data in their student information management system and communications across the partnership. Our experienced integration staff ensures each relationship is custom built. We have extensive experience working with the Banner system and other student information systems.

## Briefing Paper: Preserving Competitive Opportunities for Traditional Schools

May 21, 2010

### 1. Regulatory Summary

Congress amended the Higher Education Act in 1992 to prohibit schools who participate in federal student aid programs (Title IV) from paying commissions, bonuses, or other incentive payments to individuals based on their success in enrolling students. The objective was to stop abusive recruiting practices where unqualified students were enrolled and received federal student aid funds, which they were unable to repay. In 2002, the Bush Education Department issued 12 "Safe Harbor" regulations that carved out acceptable forms of payment that schools could use without violating the incentive compensation ban. At the end of January 2010, the Education Department concluded a negotiated rulemaking during which it made clear that it intends to strike all 12 of the Safe Harbors, with several exceptions. Following is a summary of the existing law and regulations, along with the final revised replacement draft regulation that the Department published at the January 2010 Neg Reg (all emphases added):

- 1992 Incentive Compensation Ban: The law prohibits "the payment of any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments to any person or entity engaged in any student recruiting activity." (See Tab 5)

- Summary of 2002 Safe Harbors: Permissible carve outs to the incentive compensation ban include (1) adjustments to employee compensation that are not based "solely" on the number of students recruited, admitted, enrolled, or awarded financial aid; (2) compensation to recruiters who enroll students in non-title IV eligible programs; (3) compensation for contracts with employers to provide training; (4) profit-sharing bonus plans; (5) compensation based upon program completion by students; (6) compensation for pre-enrollment activities; (7) compensation for managerial and supervisory employees; (8) token gifts; (9) profit distributions; (10) compensation for Internet-based activities; (11) compensation to third parties for non-recruitment activities; and (12) **compensation to third parties for recruitment activities**. (See Tab 5)

- Current Safe Harbor #12 in Detail: The Safe Harbor provides that prohibited incentive compensation does not include "payments to third parties, **including tuition sharing arrangements**, that deliver various services to the institution, *even if* one of the services **involves recruiting or admission activities**, *provided that* the individuals performing the recruitment or admissions activities are not compensated in a manner that would be impermissible under [the other safe harbors]." (See Tab 5)

- Final Proposed Language at 2010 Neg Reg: All of the safe harbors were stricken in their entirety, and in their place the Department proposed the following draft language:

    · "Eligible institutions, **organizations that are contractors to eligible institutions** and other entities **may make merit-based adjustments to employee compensation** provided that such adjustments are not based on success in securing student enrollments."

    · "Commission, bonus or other payment means a sum of money or something of value paid to or given to a person or an entity because of the success in securing student enrollments."

- "Securing student enrollments means direct or indirect activities that a person or entity engages in for the purpose of the admission or matriculation of a student for any period of time or award of financial aid to a student."

- "These activities include recruitment contact in any form with a prospective student, such as pre-admission or advising activities, scheduling an appointment to visit the enrollment office, attendance at such appointment or signing an enrollment agreement or financial aid application."

- "These activities **do not include making a payment to a third party for the provision of student contact information for prospective students** provided that such payment is not based on the number of students who apply or enroll."

- "Enrollment means the admission or matriculation of a student into an eligible institution." (See Tab 6)

While the Department is not required to use any of the negotiated language in the final proposed rule, assuming it does so, the current language appears to reaffirm part of Safe Harbor #1 (periodic merit based adjustments to recruitment staff), Safe Harbor #10 (non-enrollment based lead generation) and a portion of Safe Harbor #12 (third party recruitment services for which recruiters may be paid a fee). However, in this new draft, the key missing element for the nation's traditional non-profit universities is the concept of tuition sharing as a permissible payment form by the eligible institution to a third party specifically for recruiting services.

The concept of tuition sharing under the Safe Harbors did not receive any attention during the recent rule making. Most negotiators appeared unaware or simply unconcerned with the concept. The clear overall objective of the rule making was to curtail inappropriate actions by for-profit institutions on a range of 14 larger issues, of which proposed changes to the incentive compensation safe harbors was only one. That broad agenda left no time for the negotiators to focus on Safe Harbor #12.

Indeed, some negotiators off the record thought tuition sharing was completely outside the discussion of incentive compensation. Tuition sharing is not a model typically used by the for-profits, who can afford to provide their own services. Rather, it is a longstanding model employed by traditional, public and private not-for-profit post-secondary higher education institutions (Traditional schools) that allows chronically cash-strapped institutions to pay for a host of services on an as needed basis.

**2. The Current Importance of Tuition Sharing – Leveling the Playing Field**

When it comes to reaching the adult learner through online education, Traditional schools generally do not have sufficient financial resources, technical expertise or the available staff to be successful. The for-profits, by comparison, have ample funds, cutting edge systems and vast resources. Online programs as a whole have been growing at a double digit annual enrollment rate for the last five years, but a disproportionate number of these students are going to for-profit schools. In order to level the playing field, many Traditional schools have turned to Bisk Education (and similar third party providers) to assist in offering their programs online.

Pursuant to current Safe Harbor #12, these third party providers have entered into tuition sharing relationships with hundreds of Traditional schools to perform a whole range of services to support new and emerging online programs. The growing list of Traditional schools includes diverse institutions of all sizes, among them:

- The University of Florida
- Boston University
- Arizona State University
- University of Maryland University College
- Cornell University
- Illinois (Chicago)
- Northwestern University
- George Washington University
- University of Indiana
- University of Southern California
- And many more. See Tab 4 of this package for a more comprehensive list.

On information and belief, we estimate that over 325,000 students, as well as over 30,000 faculty and support staff, are engaged in online programs supported by third party services compensated via tuition sharing arrangements at the present time. More importantly, Traditional schools have only recently begun to embrace online delivery. Given a choice, many students would choose a Traditional not-for-profit university education over a for-profit post secondary degree. As more Traditional schools enter the online education market, there is enormous opportunity for them to increase overall online program enrollment to serve a much larger segment of the adult learner population.

Traditional schools have been able to leverage the industry experience, financial resources and technical expertise offered by third party providers like Bisk Education to efficiently reach this market. Such providers perform many of the vital tasks required to make the Traditional schools' online programs successful, including marketing and adult learner recruitment and retention, as well as learning management, student services, materials fulfillment, billing and more. (Note that Bisk Education does not perform admissions or financial aid processing services, does not set enrollment goals or tuition, does not define the curriculums or outcomes, and does no academic advising for their clients – these remain exclusively the responsibility of the institutions.) As a result, the Traditional schools are able to share in almost immediate revenues, with minimal start-up costs and little risk. Part of that risk mitigation comes as a result of the compensation model in the industry being tuition sharing – the schools only pay for the actual services they use, based on the number of students who actually enroll.

The need at Traditional schools has been especially heightened by recent serious fiscal challenges along with the overwhelming competitive pressure from the for-profits. Coincidentally, the Recovery Act allocated billions to broadband expansion specifically for purposes of aiding in distance education, and the Obama administration has set a target of producing five million additional adult college graduates over the next ten years, putting the US in the position of having the highest proportion of college graduates in the world. The long-term survival of not-for-profit private schools as well as public institutions alike is dependent on their ability to add adult-learners, via distance education offerings necessary to meet their special needs. It is therefore vital that the current effort to curtail for-profit abuses not simultaneously close down these other objectives for not-for-profit programs. The simple fact is, Traditional schools cannot compete and operate effectively without the support of companies like Bisk Education.

### 3. Summary of the Issue

The final draft proposed regulation on incentive compensation issued by the Department at the 2010 negotiated rulemaking is silent on tuition sharing, though the Department's draft did include an acceptance of third party recruitment services outlined in existing Safe Harbor #12. Historically, the Department has given deference in drafting its regulations to language produced during the neg reg sessions. The concept of tuition sharing as a payment option is arguably not germane to a regulation addressing incentive compensation. However, since the matter of tuition sharing is addressed in the current regulation, its absence in the final revised regulation going forward would create a regulatory grey area for many Traditional schools who employ third party providers to do recruiting services, and pay for these services via a share of earned tuition. This grey area could negatively impact all the Traditional schools that have or are trying to get online programs established using third party services.

### 4. Desired Solution

We do not wish to impede the Department in its efforts to revise regulations to address improper for-profit education company behavior. Our customers are Traditional schools. We are merely trying to prevent unintended regulatory collateral damage, not forestall needed reforms to the industry.

There are a few simple options to repair the oversight. The Department could:

(1) Clearly state in the regulations that tuition sharing is not considered by the Department to be "incentive compensation"; or

(2) Put back the balance of existing Safe Harbor #12, to wit: "Eligible institutions may compensate contractors via revenue sharing, if one of the services involves recruiting or admission activities, provided that the individuals performing the recruitment or admissions activities are not compensated in a manner that would be impermissible under the rules."

Based on publicly available information, the following represents a partial listing of Colleges and Universities that are using tuition sharing arrangements:

1. Abilene Christian University
2. Agnes Scott College
3. Albany State University
4. Albright College
5. Alcorn State University
6. Ancilla College
7. Anderson University
8. Angelo State University
9. Anna Maria College
10. Arizona State University
11. Arkansas Baptist College
12. Arkansas State University
13. Auburn University
14. Averett University
15. Baylor University
16. Baptist Bible College
17. Benedictine University
18. Bethel College
19. Bethel College of Kansas
20. Bluefield College
21. Blue Mountain College
22. Boston University
23. Bowling Green State University
24. Brescia University
25. Brewton-Parker College
26. Bridgewater College
27. Bryan College
28. Butler University
29. California Baptist University
30. California Lutheran University
31. California State University, Los Angeles
32. Campbellsville University
33. Central New Mexico Community College
34. Chester College
35. Christian Brothers University
36. Cincinnati Christian University
37. Cincinnati State Technical & Community College
38. Clear Creek Baptist Bible College
39. Coker College
40. Cornell University
41. Creighton University
42. Dana College
43. *Dominican University (Chicago)
44. Drexel University
45. Eastern Kentucky University
46. East Texas Baptist University
47. Emory University
48. Emory & Henry College

49. Flagler College
50. *Florida Institute of Technology
51. Fordham University
52. Friends University
53. George Mason University
54. George Washington University
55. Golden Gate Baptist Theological Seminary
56. Gonzaga University
57. Grace College
58. Hampden-Sydney College
59. Hannibal-LaGrange College
60. Harcum College
61. Highland Community College
62. Hofstra University
63. Houston Baptist University
64. Howard Payne University
65. Huntington University
66. Huston-Tillotson University
67. Indiana State University
68. Jackson State University
69. *Jacksonville University
70. Jamestown College
71. John's Hopkins University
72. Kent State University
73. Kentucky Wesleyan College
74. Lake Superior State University
75. Lamar University
76. Langston University
77. Lon Morris College
78. Loyola University New Orleans
79. Louisiana College
80. Louisiana State University
81. Marquette University
82. Marylhurst University
83. Miami Dade Community College
84. MidAmerican Nazarene University
85. Midway College
86. Millsaps College
87. Mississippi College
88. Morris Brown College
89. Mount Aloysius College
90. Mount Vernon Nazarene University
91. National Labor College
92. Northeastern University
93. Northwestern University
94. Norwich University
95. Notre Dame College
96. Ohio University
97. Ohio Valley University
98. Oklahoma Baptist University
99. Portland State University

100. Purdue University
101. Quincy University
102. Rhode Island Institute of Technology
103. Regis University
104. Reinhardt College
105. Saint Joseph's College (Maine)
106. Saint Joseph's University
107. Saint Leo University
108. Saint Xavier University
109. Seton Hall University
110. Siena College
111. Shorter College
112. Spring Arbor University
113. Southern Nazarene University
114. Southwestern Christian College
115. Stetson University
116. St. Andrews College
117. St. Edwards University
118. St. Johns University
119. Texas Christian University
120. Texas Tech University
121. Texas Wesleyan
122. Tiffin University
123. Trinity Bible College
124. Troy University
125. *Tulane University
126. Tougaloo College
127. Union College
128. University of Cincinnati
129. University of Florida
130. University of Illinois at Chicago
131. University of Indiana
132. University of Kentucky Virtual Campus
133. University of Maryland University College
134. University of Miami
135. University of New England
136. *University of Notre Dame
137. University of Saint Mary
138. *University of San Francisco
139. *University of Scranton
140. University of Southern California
141. University of Texas – Arlington
142. University of the Cumberlands
143. University of the Pacific
144. Utica College
145. Valley Forge Military Academy & College
146. Vanderbilt University
147. Valparaiso University
148. Vanguard University
149. *Villanova University
150. Virginia Commonwealth University

151. Virginia Military Institute
152. Wake Forest University
153. Washington College
154. Washington University of St. Louis
155. Washington and Jefferson
156. Wayne State University
157. Wells College
158. Wesley College
159. West Virginia Wesleyan College
160. Whitworth University
161. Wiley College
162. William Carey University
163. Williams Baptist College
164. Wisconsin Lutheran College
165. York College of Nebraska

*Served by Bisk Education

## Title 34: Education

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS
Subpart B—Standards for Participation in Title IV, HEA Programs

### § 668.14 Program participation agreement.

(22)(i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all full-time employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for title IV, HEA program funds.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays, directly or by reimbursement, 50 percent or more of the tuition and fees charged to its employees; provided that the compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are substantially the same amount or the same percentage of salary or wages, and made to all or substantially all of the institution's full-time professional and administrative staff. Such payments can be limited to all, or substantially all of the full-time employees at one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution.

(F) Compensation paid to employees who perform clerical "pre-enrollment" activities, such as answering telephone calls, referring inquiries, or distributing institutional materials.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the cost of the gift is not more than $100.

(I) Profit distributions proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of title IV, HEA program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of title IV, HEA program funds, are not compensated in a manner that would be impermissible under paragraph (b)(22) of this section.

Proposed New Regulation as Revised by the U.S. Department of Education:

§668.14(b)

(22) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. [Strike the 12 "Safe Harbors."]

Proposed New Regulation as Revised by the Non-Federal Negotiators and by the Department:

~~§668.14(b)~~

~~(22) It will not provide any commission, bonus, or other incentive payment as follows:~~

~~i. Employees who work for institutions of higher education (or organizations, or employees of organizations, that are contractors to institutions of higher education) who are engaged in student recruitment, admission activities, or in making decisions regarding the award of financial aid may not receive any commission, bonus, or other incentive payment based on success in securing student enrollments or financial aid and which is determined on a per student calculation.~~

~~ii. Institutions of higher education (or organizations that are contractors to institutions of higher education) may make merit-based adjustments to employee compensation provided that they do not make more than two such adjustments in a calendar year and that such adjustments are not based on success in securing student enrollments on a per student basis. The same limitation shall also apply to entities engaged in student recruiting or admission activities or in making decisions regarding the award of student financial assistance. Such merit-based adjustments may consider performance against institutional goals, such as total enrollment, completion, or graduation, but shall be primarily based on qualitative factors as determined by the institution.~~

~~iii. 668.14(b)(22)(i-ii) do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.~~

~~[Strike the 12 "Safe Harbors."]~~

(22)(i)(A) Except as expressly provided in paragraph (b)(22)(ii) of this section, it will not provide any commission, bonus, or other incentive payment based directly or indirectly upon on success in securing enrollments or the award of financial aid, to any employee who works for an eligible institution (or any organization or employee of an organization that is a contractor to an eligible institution) and person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of student financial aid.

(B) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(ii) Eligible institutions (or organizations that are contractors to eligible institutions) and other entities may make merit-based adjustments to employee compensation provided that such adjustments are not based on success in securing student enrollments or the award of financial aid. The same limitation shall also apply to entities engaged in student recruiting or admission activities or in making decisions regarding the award of student financial assistance.

(iii) ~~Definitions~~ — As used in paragraph (b)(22) of this section, ~~this part,~~

(A) "Commission, bonus, or other incentive payment" means a sum of money or something of value paid to or given to a person or an entity because of the success in securing student enrollments or the ~~provision~~ award of financial aid. It does not include token gifts that eligible institutions provide to their students or alumni provided that the token gifts are not in the form of money, no more than one gift annually is provided to an individual, and the cost or fair market value of the gift is not more than $50.

(B) "~~Success in securing~~ Securing student enrollments or awards of financial aid" means direct or indirect activities that a persons or entityies engages in ~~that result in~~ for the purpose of the admission ~~and~~ or matriculation of a student for any period of time or the ~~provision~~ award of financial aid to a student.

i(1)~~.~~ These activities include direct recruitment contact in any form with a prospective student, such as pre-admission or advising activities, scheduling an appointment to visit the enrollment office, attendance at such appointment, or signing an enrollment agreement or financial aid application.

~~ii. These activities include obtaining a student's attendance for any period of time less than that required to complete the program and obtain a certificate or degree.~~

iii(2)~~.~~ These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on the number of students who apply or enroll.

(C). "Enrollment" means the admission ~~and~~ or matriculation of a student into an eligible institution~~ of higher education~~.