**Change in Ownership, Prison Education Programs, and 90/10**

Notice of Proposed Rulemaking

*Summary*

The Department of Education conducted two negotiated rulemaking sessions from October 2021 – March 2022 to discuss college affordability, student loan, and institutional accountability issues. On July 26, the Department released a second Notice of Proposed Rulemaking (NPRM) on the following topics: change in ownership and control, prison education programs, and the 90/10 rule. Below is a summary of what was proposed in the NPRM. Comments are due 30 days after the proposed rules appearance in the Federal Register.

**Change of Ownership and Change in Control**

Department’s Proposal Solutions

* *Amend the definitions of additional location and branch campus.* The definitions of additional location and branch campus are amended to clarify that both must be a physical facility that is separate from the main campus within the same ownership structure. The definition clarifies that additional locations are only able to participate in Title IV funding through the main campus and that branch campuses must be approved by the Secretary and be independent from the main campus.
* *Distance education courses must be associated with the main campus.* A requirement is created for institutions that offer on-campus programs and distance education programs to have the distance education programs be associated with the main campus, except for correctional institutions, which are considered additional locations.
* *Define main campus:* The definition of a main campus is defined to be the primary physical facility where the institution offers eligible programs and is certified by the Secretary and the appropriate accrediting agency to be the main campus.
* *Amend the definition of a private, nonprofit institution.* It is proposed to define a private, nonprofit institution as an institution that has no part of its net earnings benefiting any private entity or natural person. A private, nonprofit institution cannot have a revenue-sharing agreement with any former owner, or current or former employee, of the institution or member of its board. It also cannot have a revenue-sharing agreement with a natural person, or anyone previously mentioned, unless it can be demonstrated that those revenue-sharing agreements are reasonable based on the market price for such services or materials.
* *Define change in ownership.* A change in ownership is defined as resulting in a change in control if the following occurs:
  + A person, or combination of persons, acquires at least 50% of the total outstanding voting interests or ceases to hold 50% of the total outstanding voting interests;
  + A partner in a general partnership acquires or ceases to own at least 50% of the voting interests in the general partnership;
  + A change in a general partner or managing member, if the general partner or managing member holds an equity interest;
  + A person becomes, or is replaced as, the sole member or shareholder;
  + An entity that has a member or members ceases to have any members and an entity that has no members gains a member or members;
  + The addition or removal of any entity that provides, or will provide, audited financial statements to the Department;
  + An owner transfers 50% or more of the voting interests in the institution to an irrevocable trust where the trustee is a non-family member; and
  + The death of an owner who transferred 50% or more of the voting interests in the institution or an entity to a revocable trust where the trustee is a non-family member.

**Prison Education Programs**

Department’s Proposed Solutions

* *Eligible program.* A prison education program is now considered an eligible program. A new regulatory section is created to define an eligible prison education program.
* *Student eligibility.* Gives access to federal Pell Grants to students that are incarcerated and enrolled at an eligible program.
* *Added definitions.* Definitions of advisory committee, feedback process, and relevant stakeholders to the approval and operation of the prison education program were added.
* *Added waiver exception.* Current regulations include waiver language regarding the requirement that institutions do not qualify as an eligible institution for purposes of Title IV if more than 25% of the institution’s regular enrolled students are incarcerated. It was proposed to allow institutions to receive a waiver if they are a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor’s degree, an associate degree, or a postsecondary diploma and has continuously provided an eligible prison education program approved by the Department for at least two years. The Secretary will not approve a program if it does not maintain an 8-year completion rate of 50% or provides one or more prison education programs that are non-compliant or is not deemed administratively capable or financially responsible.
* *Waiver limitations.* For five years after a waiver is granted, an institution cannot have an enrollment where more than 50% students are incarcerated and not more than 75% for an additional five years. This does not apply to institutions with a mission to primarily serve incarcerated students.
* *Educational programs.* An eligible institution that seeks to establish the eligibility of an educational program must obtain the Secretary’s approval for the first eligible prison education program offered at its first two additional locations at a federal, state, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution.
* *Reporting requirements.* An eligible institution must report to the Secretary in a manner prescribed by the Secretary, no later than 10 days after its establishment or addition of an eligible prison education program at an additional location at a federal, state, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution that was not previously included in the institution’s application for approval.
* *Oversight entity.* An oversight entity is given the authority to approve prison education programs and will do so based on the feedback of an advisory committee and its own overall determinations.
* *Institutional information.* A clarification that enrolled and prospective students must be informed whether or not an occupation that a prison education program prepares students for involves state or federal prohibitions of the licensure or employment of formerly incarcerated individuals.
* *Accreditation requirements*. A prison education program must meet the institution’s accrediting agency or state approval agency requirements.
* *Application requirements*. An institution that seeks to offer a prison education program must apply to the Secretary to have its first prison education program at its first two additional locations approved. Following the Secretary's initial approval of a prison education program, additional prison education programs at the same location may be determined to be eligible without further approvals from the Secretary except where required, if such programs are consistent with the institution’s accreditation or its state approval agency.
* *Best interest determination*. An oversight entity must determine that the prison education program is in the best interest of students.

**Title IV Revenue and Non-Federal Education Assistance Funds (90/10)**

*This rule is only for for-profit institutions.*

Department’s Proposal Solutions

* *Clarify that 10% of all revenue to for-profit institutions must be from sources other than federal funds*. The Department clarifies that it is not just Title IV funds that are used in calculating the revenue percentage 90/10 ratio, but it is all federal funds.
* *Income share agreements can be considered revenue derived from sources other than federal funds*. If institutions include income-share agreements as cash in the annual audit they submit to the government, then additional criteria apply.
* *Add additional requirements for institutions*. For-profit institutions are given additional requirements to adhere to when complying with the 90/10 rule.