Date: September 12, 2011

To: Human Resources Officers
   Associate Vice Presidents/Deans of Faculty

From: Evelyn Nazario
   Assistant Vice Chancellor
   Human Resources Management

Subject: New Department of Education Incentive Compensation Rules for Colleges and University Employees and Third-Party Servicers

Overview

Audience: HR professionals responsible for communicating human resources policies and managers of student admissions and/or student financial assistance

Action Item: Implementation of new Department of Education regulations regarding incentive compensation

Affected Employee Group(s)/Unit(s): Employees responsible for securing enrollment and/or securing financial assistance

Summary

As communicated in HR 2011-09, on October 29, 2010, the Department of Education published new incentive compensation rules for college and university employees, as well as employees of third-party servicers, engaged in student recruitment or admission activity, or in making decisions regarding the award of Title IV Higher Education Act (HEA) program funds. The new rules eliminate the “safe harbor” provisions related to incentive compensation and are effective July 1, 2011. The above-identified audience should review the remainder of this technical letter for more detailed information.

History of HEA Incentive Compensation Rule

The Higher Education Act was enacted in 1965 “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education.” It increased federal money given to universities, created scholarships, gave low-interest loans for students, and established a National Teachers Corps. The “financial assistance for students” is covered in Title IV of the HEA.

In 1992, due to “questionable” recruiting practices of for-profit institutions, an incentive compensation rule was implemented. The rule prohibits schools that receive Title IV student aid funds from providing commission, bonus or other incentive payment based on success in securing enrollments or financial aid, to anyone involved in student recruiting or in making decisions regarding the award of student financial assistance.
Implementation of “Safe Harbors”

On November 1, 2002, due to confusion over the application of the incentive compensation rule, the Department of Education (DOE) published safe harbor regulations, which allowed for 12 activities or payment arrangements that schools could use without violating prohibition on incentive payments. Two such safe harbors include the ability to consider enrollments in setting compensation, as long as increases in salary were not made more than twice a year, and allowing payments based on program completion.

New Regulations/Covered Activities

On October 29, 2010, the DOE published Title IV Program Integrity Regulations http://www2.ed.gov/legislation/FedRegister/finrule/2010-4/102910a.pdf which became effective July 1, 2011, and require colleges and universities to ensure that compensation, classification and third-party servicers’ programs do not consider success in securing student enrollments and/or the award of financial aid in any compensation or classification decisions. On March 17, 2011, the DOE released a “Dear Colleague” letter to assist institutions with understanding the changes to the incentive compensation regulations.

According to the regulations, organizations may not provide “any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of Title IV HEA program funds.” In addition, the regulations eliminate distinctions based on an individual’s position. The incentive ban now extends to “any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding Title IV, HEA program funds.”


Athletic Department Staff

The regulations and the DOE’s “Dear Colleague” letter create some ambiguity when it comes to the applicability of the regulation to athletic personnel.

The regulations state that “Recruitment of student athletes is not different from recruitment of other students… If the payments are made based on success in securing enrollments or the award of financial aid, the payments are prohibited; however, the Department does not consider ‘bonus’ payments made to coaching staff or other athletic department personnel to be prohibited if they are rewarding performance other than securing enrollment or awarding financial aid, such as a successful athletic season, team academic performance, or other measures of a successful team.”

The DOE’s “Dear Colleague” letter further states that “the payment of bonuses to athletic personnel is a common practice and is not typically viewed as incentive compensation based on recruitment of individuals as students, but at most may indirectly reward success in recruiting that small subset of individuals whose enrollment would benefit the institution’s athletic program.”

It is unclear whether athletic personnel may continue to receive incentives based on team National Collegiate Athletic Association (NCAA) Academic Progress Rate (APR) scores, team graduation rates or team GPA scores, common criteria currently included in athletic coach supplemental compensation.
Systemwide Human Resources and the Office of General counsel advise that, while there is some risk, in light of the DOE’s ambiguous language, our best judgment is that campuses may continue to utilize these team incentive compensation provisions in appointment letters until the DOE provides further clarification that any of these incentives violate the new regulations. We will continue to monitor this issue and communicate any changes.

Salary Adjustments
The new regulations apply to salary adjustments (lump sum and base building), as well as promotion and demotion activities. According to the regulations, “an institution may not consider the employee’s success in securing student enrollments or award of financial aid in providing this type of compensation. Further, an increase in compensation that is based in any part, either directly or indirectly on the number of students recruited or awarded financial aid is prohibited.”

Compliance Guidelines
Campus HR professionals should:
1. Review the final regulations and “Dear Colleague” letter (links, above)
2. Identify departments that may have employees who perform covered activities (e.g., Admissions, Financial Aid, Athletics, Student Services, etc.)
3. Contact department management to inform them of the new regulations
4. Work with applicable department managers to review position descriptions of employees who may perform covered activities and to identify covered employees
5. Review performance plans of covered employees to ensure that they do not include prohibited performance objectives such as securing a certain number of student recruitments or financial aid awards. If they do, the performance objective must be removed. Acceptable performance objectives include: knows policies/options and communicates them effectively to students and their families, number of students served, results of surveys (e.g., customer service survey), independence, implementation of new ideas, etc.
6. Discuss compensation policies and practices for covered employees and advise the department on required changes to policies and practices, if any
7. Ask covered employees to sign a document indicating that they are aware of the new regulations and understand why changes were made to their compensation plans, including performance measures. Place signed document in the employee’s personnel file. (See attached example of notice document )

Questions regarding this technical letter may be directed to Human Resources Management at (562) 951-4411.

This document is available on the Human Resources Management’s Web site at:
https://www.calstate.edu/HRAdm/memos.shtml

EN/dm

Attachment
Sample Letter for
Notice of New Title IV HEA Incentive Compensation Rule

Employee Name:  Department:
Title:  Campus:
Date:

In 1992, the Department of Education (DOE) implemented an incentive compensation rule that prohibits schools that receive Title IV student aid funds from providing commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to anyone involved in student recruiting or admission activities or in making decisions regarding the award of student financial assistance. In 2002, the DOE published “safe harbor” provisions that allowed for 12 activities or payment arrangements that schools could use without violating prohibition on incentive payments.

I have been informed that, on October 29, 2010, the DOE published new incentive compensation rules which, among other things, eliminate the “safe harbor” provisions related to incentive compensation. The new incentive compensation rule became effective on July 1, 2011. According to the regulations, organizations may not provide “any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of Title IV HEA program funds.”

In addition, the regulations eliminate distinctions based on an individual’s position. The incentive ban now extends to “any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding Title IV, HEA program funds”.

I understand that, as a result of this new rule, the CSU may not consider my success in securing student enrollments and/or award of financial aid in any compensation or classification decisions, including base building salary increases, lump sum bonuses, reclassifications, promotions, or demotions. I also understand that any performance objective related to the above mentioned “prohibited” activities must be removed from my performance plan.

By signing this letter, I am confirming that I have been notified of the new Title IV HEA incentive compensation rule and the impact on the compensation and classification of my position.

________________________  __________________
Signature of Employee  Date

cc: Personnel File