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HIGHER EDUCATION INFORMATION MEMO

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Education Department Unveils Final Rules to Protect Veterans and Service Members

On Oct. 27, 2022, the U.S. Department of Education (Department) [announced](#) final rules aimed at strengthening protections for U.S. service members and veterans, improving access to prison education programs, and raising accountability in the for-profit sector.

90/10 Loophole Closed

Under the Higher Education Act, for-profit institutions of higher education (IHEs) were required to bring in 10% of their revenue from nonfederal sources as part of a “market viability test”—also known as the “90/10 rule.” However, a loophole in the law allowed federal money from the Department of Defense, including G.I. Bill benefits, to be counted as nonfederal sources.

The American Rescue Plan, signed into law by President Biden in 2021, closes this loophole and no longer permits for-profit IHEs to count money generated from service member and veteran benefits toward their 10% nonfederal source of revenue requirement. This revision in the law was enacted as a protective measure to limit aggressive recruiting tactics used to target U.S. service members and veterans. The revised regulations will become effective and will apply to institutional fiscal years beginning on or after Jan. 1, 2023.

Prison Education Program

Beginning July 1, 2023, incarcerated individuals who enroll in qualifying prison education programs will become eligible for Pell Grants. This initiative is aimed at creating access to effective prison education programs for incarcerated individuals and reducing recidivism. Even before the Pell Grants become widely available to prisoners, an expanded Second Chance Pell Experimental Sites Initiative will be available to incarcerated individuals in nearly every state.

Additionally, the Department announced that [FSA’s Fresh Start Initiative](#) will also be available to incarcerated individuals. This initiative is designed to provide access to lower, income-based monthly payments for borrowers with defaulted loans.

New Accountability Measures & Requirements

A new [regulatory package](#) aimed at clarifying requirements for IHEs undergoing changes in ownership will take effect July 1, 2023. The goal of these measures and requirements is to prevent financial benefits to former owners or affiliates of institutions. In addition, the new rules update the definition of a “nonprofit” IHE to prevent improper financial benefits to former owners or affiliates.

In particular, an IHE that is undergoing a change in ownership must provide at least 90 days’ notice to its student body and the Department. Additionally, this requirement aims to prevent insider involvement and improper benefits that may arise in often-complex change in ownership transactions. Furthermore, IHEs may also be required to comply with additional conditions or provide additional financial protections whilst undergoing a change in ownership.

Bond's higher education attorneys closely monitor developments to the rules and regulations surrounding IHEs. For more information or questions about the information provided above, please contact [Seth Gilbertson](#), [Allison Contrera](#), any attorney in Bond's [higher education practice](#) or the Bond attorney with whom you are regularly in contact.



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