



DEFINITION OF A NON-PROFIT INSTITUTION



Current Regulatory Text: Current regulations define a domestic nonprofit institution as one that meets the following requirements:

- Is owned and operated by one or more nonprofit corporations or associations and no part of the net earnings benefit any private shareholder or individual;
- Is legally authorized to operate as a nonprofit organization by each state in which it is physically located; and
- Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code.

Proposed Changes to Regulatory Text: During the negotiated rulemaking session, the Department of Education proposed to make the following modifications to the current regulatory text:

- Ensure that no part of the net earnings of a private, nonprofit institution benefit a *private entity or individual as determined by the Secretary*; and
- Define a private, nonprofit institution as being an institution that:
 - Is not an obligor on a debt owed to a former owner of the institution or anyone affiliated with the former owner of the institution;
 - Does not maintain a revenue-sharing agreement with any party (related or unrelated) unless the institution can show that payments under the agreement are reasonable based on market price; or
 - Is not a party to any other agreement with a former owner, or anyone affiliated with a former owner, of the institution unless the institution can demonstrate that payments under the agreement are at fair market value.



What does this mean? The proposed changes are an attempt by the Department to specifically address institutions that undergo a change of ownership and change in control. Unfortunately, the proposed changes go beyond only addressing these types of institutions and, instead, places further restrictions on the nonprofit status of all private, nonprofit institutions.

Concerns: The proposed changes are concerning because the regulatory text is broad and vague. It can be extremely problematic for an institution to ensure that no part of its net earnings will benefit any private entity, especially when “private entity” is not defined. Also, the term “revenue-sharing agreement” can potentially encompass many sorts of agreements to



include Online Program Managers and contractual agreements with food servicing, housing, bookstores, etc.

SOLUTION

Solution: The most reasonable solution would be to keep the current regulatory language with no modifications. However, if changes must be made, they should be targeted toward institutions that convert from for-profit to non-profit status.

When addressing net earnings, no net earnings should benefit a private shareholder or individual, as articulated in Section 103(13) of the Higher Education Act, and any revenue-sharing, or revenue-based, agreement should be narrowed to focus on agreements with a former owner of the institution.