



The Career College Information Source

Dealing with New Advertising Guidelines

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MDT Direct*

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The new regulations set forth by the Department of Education were on everyone's mind at the 2011 APSCU Convention. Higher education marketers and education institutions must be diligent to include the correct disclosures and avoid any advertising that may be construed as misleading. The broad definition presented by the DOE has created confusion for many as to what is required of them and this sparked numerous lively discussions, which permeated at almost every speaking session.

What We Learned at APSCU

Our breakout session; Fixing the Student Recruitment Problem: Best Practices Initiatives by Institutions and Their Vendors, sought to help dispel some of the rumors and set the record straight for institutions in search of how to handle Internet vendors in the face of the new regulations. Internet inquiry generation takes many forms, and sometimes these practices are not well understood by institutions. Changes to federal regulations make institutions responsible, however, whether erroneous recruitment practice is intentionally misleading or not. Steps are being taken both by the vendor (Education Marketing Council) and the school (APSCU Student Recruitment Task Force) communities to improve the situation for all.

The biggest disconnect seemed to be between institutions' need for information and Internet companies looking to find ways to continue business as usual. Unfortunately, the business model that works so well for the vendors provides the institutions with little control over the online advertising associated with the school's name.

"Transparency" seemed to be the biggest buzzword thrown around. What does it really mean and why are institutions demanding it? Internet forms are sometimes buried within larger sites. A potential student may have seen ten other pages before they get to a school's lead form. Knowing exactly which path that potential student took to get to the school's information lets the school be fully informed as to what information was presented, how it was

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presented and if any of the information was misleading. Institutions are being forced to take responsibility for their vendors' actions and for this reason must be able to track the advertising path that led to them.

Another clear reason for the need for transparency in this recruitment practice that institutions showed concern for are call center-generated inquiries. Sometimes up to 50 percent of inquiries received from an online vendor can be generated via a call center. This can potentially lead to issues regarding misrepresentation and also could potentially violate incentive compensation rules. Each institution needs to make a decision whether to accept this type of inquiries or not. If they are accepted, an institution needs to have access and regularly monitor and listen to what is being said on these calls.

While Internet advertising is never going to end, institutions are seeing the need to continually monitor all Internet vendor sites and pages, search for instances of their name being used online, test vendor forms, demand transparency from vendors and most importantly, err on the side of caution. Many software programs are available that automatically verify most of this information. At a small cost, a school can have every ad, form and inquiry documented by source.

Internet Initiatives

Employing mystery shopping services has long been a valued practice in checking up on admissions teams. Now there is a need for Internet advertisers as well. Having constant tests made on vendors allows institutions to check for compliance throughout the online recruitment process.

Disclosures are a key component of the new regulations. Programs receiving Title IV funding are required to report on a Web page and in any other advertising the specific items required by the Department. In determining the specific need for these disclosures, a school, its advertisers and its agencies are faced with interpreting the rules in a manner that does not skirt the line of compliance. The information must be able to be printed, copied by a user and/or searchable by the search engines. In other words, it cannot be a picture file, it must be actual text.

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Until the Department releases its disclosure format this fall, institutions are left on their own to create and implement disclosures. The DOE has indicated the below must be included (for Title IV funded programs):

- On-time graduation rate
- Graduate employment statistics (placement rates)—if required by the accrediting body
- Classification of Instructional Program (CIP) code
- Name and Standard Occupational Classification (SOC) code(s) program prepares student for
- Links to individual occupation on O*Net and the Bureau of Labor and Statistics Occupational Outlook Handbook
- Median loan debt

- Total program cost (including tuition, books, supplies, room, board and any other necessary expenses)

It does seem that the Department has not said institutions cannot also include the same information for local community colleges, private and/or public universities for comparison. By providing this information (which must be based on fact and referenced), prospective students will be better able to make an informed decision.

For disclosure clarification, the Department has published additional verbiage in the *Federal Register*:

....an institution must prominently provide the required information on the home page of its program Web site and provide a prominent and direct link to this page on any other Web page about a program. The information displayed must be in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information.¹

Fine print suggested by the Department of Education reads:

- For more information about our graduation rates, the median debt of students who completed the program and other important information, please visit our Web site at www.xyzcollege.edu/disclosures.²

However, institutions have taken their own approach in most cases and paraphrased the above to fit their advertising.

Where We Are

Advertising programs are more heavily regulated than ever. Institutions and their agents are being forced to interpret laws that at best can be described as vague. When and where are disclosures required? What is to be included in the disclosure? What constitutes “misleading”? How far up the advertising chain does the school’s responsibility go?

As an advertising agency, companies like ours can offer advice, but in reality, the true burden falls onto the institutions. Each school is responsible for developing its own corporate strategy and ensuring that all vendors, advertisers and recruiters comply with this strategy. A few major components of advertising and recruitment programs are the targets of further scrutiny and worth mentioning.

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Traditional Advertising

The Department of Education has been clear in its FAQ that all advertising mentioning affected programs must contain some form of disclosure. On May 12, 2011, the following was published in response to a question on this topic:

D-Q3: The gainful employment disclosure regulations require that all promotional materials for a program include the required information specified in the regulations at 34 CFR 668.8(b)(1). How does that requirement apply to postcards, invitations, flyers, billboard and transit advertising, radio, television, Web and similar advertising and solicitations?

D-A3: If the invitation, advertisement, or solicitation mentions or otherwise refers to a specific educational program or programs, the disclosure information must be included whenever feasible. If providing the information is not feasible because of the size or structure of the invitation, advertisement, or solicitation, an institution may include either the printed URL or a live link to the Web site where the required information is located, with a clear explanation of the information that is available at that Web site.³

It is with this statement in mind that many agencies and attorneys now suggest some form of link to the disclaimer pages on any and all advertising relating to programs offered at postsecondary institutions receiving Title IV

funding. Radio compliance can be accomplished with a whisper-type message at the end of the spot stating the disclaimer is available and giving the Web site address (similar to the fast talking at the end of car dealer radio advertising). All other mediums allow for some version of the printed link to be included.

Misrepresentation

Institutions are responsible for any statement made directly or indirectly about their institution in any form of advertising by themselves or third party vendors they have contracted with to provide advertising, marketing, recruiting or admissions services. By no means comprehensive, below is a list of triggers institutions are attempting to avoid in advertising:

- Any and all claims must be substantiated in fact. Any outside sources must be cited and referenced
- Promises of grants or scholarships
- References to national statistics that may not be relevant to your local area
- Financial aid mentions must use “for those who qualify”
- Salary claims—must be able to prove with graduate factual statistics
- Job promises, suggestions of job availability or any advertising from “help wanted” sources, claims of graduation to employment time frames (be working in 8 months)
- Facility claims—state-of-the-art, small class sizes, modern (any superlatives that are not based on fact)
- Certification claims—be VERY clear on what is certified
- Accreditation claims—make sure school-specific or program-specific, depending on your actual accreditation
- Program length—is term full-time or part-time? Advertise based on actual data
- Lifetime anything—can you guarantee your school will be around for the reader’s entire life?

- Non-mentions are the same as misleading statements—if students need to get further certification after graduation for employment or if criminal record checks are required for employment those must be disclosed up front
- Credit transfers—be clear on what the actual options are

Social Media

One of the concerns institutions have is, “how do we control comments and reviews posted by people outside of our control.” The department has stated in its discussion of the submitted comments that “statements made by students through social media outlets would not be covered by these misrepresentation regulations⁴.” This excludes online reviews, Facebook comments and other outlets of which opinions have been presented by outside sources from the misrepresentation requirements. The department also excludes comments from those who are not involved in or contracted by the school to perform advertising, marketing, admissions or recruiting functions (the example provided: food service workers⁵).

Institutions do need to adhere to the guidelines on any pages they control and statements made by their involved employees (such as their main Facebook and LinkedIn pages).

Outside Vendors (3rd Party Advertisers)

The DOE has indicated in its new rule set that a school is responsible for any and all advertising messages placed directly by the school or indirectly by a contracted company on the school’s behalf. Of big concern for institutions within this scope are the online “pay-per-lead” vendors. These vendors draw Internet traffic to their online directories via various advertising strategies. History has shown these strategies are not always in line with the Department’s regulations.

Many institutions work with multiple vendors, some of which could have hundreds of sites and forms. For a school to try to manage and control each and every vendor’s information for content compliance, it could be a cumbersome challenge. One of the easiest, most manageable solutions would be for the institutions to require vendors

to link to the disclosures on their own site or to set up an additional disclosure site, independent of their regular Web site, which only contains the disclosure information and does not link to the main school Web site. This can be a “closed” link (opening in a separate window without the URL displayed). This method allows vendors to link to the correct information without the worry of losing the prospect. Institutions are able to manage the disclosure statements in one place and insure DOE disclosure requirements are being met.

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Misleading advertising can be interpreted on an individual basis so institutions are taking steps to track every instance of advertising that represents them. There are obvious and not-so-obvious examples, but making sure the school name is used with caution and in a compliant manner in every instance can prevent major issues in the future. The Department of Education has stated that they will use a “rule of reasonableness and consider various factors⁶” in its analysis. However, it is usually best to err on the side of caution rather than make a potentially costly guess. As many attorneys have stated, the Department’s stance on many of these issues will become clearer when they start enforcing the rules and penalizing institutions. The best hope is that good institutions do not get caught in that crossfire.

What is Being Done Now

Internally, institutions need to take the proper steps to become compliant and stay within the realm of recruiting behavior deemed acceptable by the Department and their accrediting bodies. For some, this involves hiring their own compliance directors and creating internal departments to help manage this daunting task. Many software packages are available to institutions to monitor Internet ads, track lead forms and signal when the

school's name is used anywhere online. Setting these initiatives into motion seems like a daunting task but broken down, there are few key components to maintaining compliance.

Do your research. Know what is required of your school, by program. Keep up with the changes as they are published. All institutions are encouraged to please keep up with the Department of Education FAQ on gainful employment recruiting and disclosure: <http://www.ifap.ed.gov/GainfulEmploymentInfo/2011GEFAQ.html>. This site is continually being updated as questions are asked and the Department provides answers.

Develop a corporate strategy. Make sure your entire staff (even those outside of the advertising and admissions departments) is aware of this policy and on alert to notify the proper channels if they see something violating

Showing your accrediting body, state licensing organization or the DOE the steps you have taken to manage, monitor and address compliance seems to be the best way to protect your school, based on what consensus seems to indicate.

this policy. Ultimately it is up to each school to maintain its Title IV funding. Utilizing outside tools and resources can help with this; however, no outside agent can fully protect a school from losing funding.

Develop internal systems with checklists. All written and verbal communications to a potential student made by anyone representing a school can potentially be used against a school in the future. Taking steps to make sure every communication has a specific script or outline and demanding those documents get followed exactly greatly reduces the chance for errors. Perform regular, documented inspections such as monitoring inbound and outbound calls, mystery shopping your vendors and searching the Web for instances of your name.

Act on EVERYTHING you find. If something seems questionable to you, act on it. This is not the time for taking chances. Immediate

action must be taken to correct any infractions or wrong-doing a school finds. Internet advertising is unique in that an ad or Web page can be removed in seconds. Remember, a vendor can be sued, but that will not change your Title IV status if the Department of Education finds you in the wrong.

Document every action. Every print ad is stored within your database. There are systems available that let you monitor and store all online ads and forms.

Showing your accrediting body, state licensing organization or the DOE the steps you have taken to manage, monitor and address compliance seems to be the best way to protect your school, based on what consensus seems to indicate. The end goal is to protect your school, your students and the longevity of the sector.

What it all means

Many institutions are realizing that no outside source can protect them as well as they can on their own. Even though advertising agencies and other companies are offering these services to institutions for a fee and offering to accept liability for compliance monitoring, when Title IV funding is on the line, legal liability is sometimes the lesser worry a school may have.

About the authors

Mitch Talenfeld is the CEO of MDT Direct. Mitch was recognized at the 2011 APSCU Convention as the Allied Member of the Year. He has been involved in advertising and marketing for almost 30 years. He has conducted numerous advertising seminars, spoken at national and state conventions and published many articles on this field. He has received the Florida Direct Marketing Association's highest honor, the Golden Conch Award, for outstanding leadership and achievements in the Direct Marketing Industry.

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About MDT Direct

MDT Direct does business with over 300 schools and colleges nationwide, helping them to improve their advertising, communication and admission's effectiveness. By combining the use of traditional direct marketing techniques with some of today's cutting-edge technology, MDT Direct has been a leader in the world of traditional school advertising for over 15 years.

Questions or Comments?

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