

PART 2

COMMISSIONED AGENTS AND NACAC'S GUIDE TO ETHICAL PRACTICE SERIES LEGAL REQUIREMENTS AND ACCREDITATION STANDARDS

This paper is the second in a series of NACAC resources designed to guide member institutions in the implementation of NACAC's *Guide to Ethical Practice in College Admission*, approved by the association's Assembly in September 2020.

This installment focuses on pertinent legal regulations and standards for institutions that work with commissioned agents, providing specific information related to NACAC's advisement that institutions should hold "agents to the same ethical standards as they do their staff members" (NACAC *Guide to Ethical Practice*, p.9).

The paper is organized into four sections: 1) US federal legal requirements, 2) US accreditation standards, 3) regulatory and quality assurance frameworks in other receiving countries, and 4) regulatory frameworks in sending countries.

1. US Federal Legal Requirements

US Higher Education Act (HEA): The [Higher Education Act](#) of 1965, amended in 1992, requires postsecondary institutions participating in the Title IV federal student aid program to act in accordance with the following:

The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admissions activities or in making decisions regarding the award of student financial assistance, **except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.** (20 USC 6 § 1094[a]{20}).

Legal guidance varies on how this exception is interpreted. But institutions risk violating the HEA if their incentive-based compensation involves recruiting either 1) international students residing in the United States, or 2) students attending overseas secondary schools who are eligible for US federal student aid.

The HEA also contains provisions that ban misrepresentation of an institution. These regulations apply to both the institutions and to third parties working on the institution's behalf. As such, actions by agents that run afoul of HEA misrepresentation regulations could jeopardize the institution's eligibility for Title IV HEA funds.

FERPA: The [Family Educational Rights and Privacy Act \(FERPA\)](#) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the US Department of Education. Under FERPA, higher education institutions are required to obtain the permission of students before releasing any records to third parties.

FERPA allows the release of "directory" information that would not be considered an invasion of privacy—such as name, date and place of birth, honors and awards, dates of enrollment—without permission from the student. However, institutions must inform students about the release of such information and allow students a reasonable period of time to request that the school not disclose such information about them.



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FERPA regulations apply to releasing information to agents concerning *enrolled* students. Agents may, for example, seek information about an enrolled student's academic progress for purposes of payment. FERPA regulations would not, however, prohibit an institution from authorizing payment to agents for students who have successfully completed the requisite studies, provided they are not releasing confidential information.

Institutions are advised to err on the side of caution in releasing data about students and consult with legal counsel.

2. US Regional Accrediting Agencies

Institutions working with agents, or considering doing so, should be informed about the relevant policies of their regional accreditors. There are several common threads in the policies of the six regional accreditors that are relevant to, although not specifically aimed at, international recruiting agents. The themes are as follows:

- **Institutional integrity and transparency in information provided to students, prospective students, and the public.** All the regional accreditors address this issue in some form. For example, in its [Principles of Accreditation](#), the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) speaks to this core tenet in Section 1 "Principle of Integrity," Section 10 "Educational Policies, Procedures, and Practices," Item 10.5 on the accuracy of admission materials, and Section 14 "Transparency and Institutional Representation." Similarly, the Higher Learning Commission's [Criteria for Accreditation](#) focuses on integrity in Criterion 2 "Integrity: Ethical and Responsible Conduct" and Item 2.B addresses transparency to students and the public.
- **Institutional responsibility for contractual arrangements with third parties.** The New England Association of Schools and Colleges (NEASC), for instance, specifies in [Standards for Accreditation](#) that institutions must maintain sufficient control of contractual arrangements, including those for the recruitment of students. NEASC also asserts that institutions are responsible for all activities carrying its name (p.26). The Middle States Commission on Higher Education similarly holds institutions accountable for "activities carried out under the institution's name" in its policy [Contracts by Accredited and Candidate Institutions for Education-Related Services](#).

In addition to these broad policies, the Middle States Commission on Higher Education (MSCHE) discussed regulations directly related to agents in 2017. The agency proposed a policy regarding published information and student recruitment, which included language that would prohibit recruitment of international students on a commission basis. After further study and legal review, however, MSCHE decided to permit the institutions in its purview to continue using commissioned-based agents to recruit international students.

3. Regulatory and Quality Assurance Frameworks in Other Receiving Countries

The United States is not alone in using commission-based recruiting agents. Indeed, as outlined in the [introductory paper](#) of this series, the United Kingdom, Australia, and New Zealand make much more extensive use of agents than the US. Although the regulatory environment and quality assurance practices differ among countries, the overall objectives are the same:

- to ensure that institutions uphold quality standards, exercise due diligence in their work with agents, and engage in transparent and ethical practices
- to ensure that students are protected
- to ensure that agents are aware of their obligation to adhere to professional and ethical standards.

The quality assurance and regulatory frameworks of the three nations outlined below put the burden of ensuring good practice—including monitoring agents' performance—on the institution. At the same time, agents must be made aware of their obligations and responsibilities.



To advance this goal, government agencies in Australia, the UK, Ireland, and New Zealand articulated a set of principles and standards of behavior for agents in their 2012 [Principles for the Ethical Recruitment of International Students by Education Agents](#), known as the London Statement. This statement has served as a foundation for further activities by the signatories and was later signed by every sector of Australia's international education industry. The International Education Association of Australia (IEAA) went on to develop a code of ethics based on the London Statement. Australia's [National Code of Practice for Providers of Education and Training to Overseas Students](#) requires institutions to ensure that agents adhere to the [Agent Code of Ethics](#) developed by the IEAA. In the UK, for example, agents listed in the British Council database are required to undergo the council's training program and agree to abide by the principles elaborated in the *London Statement*.



The *London Statement* outlines an “Underlying Ethical Framework” for agents as follows:

- **Integrity** — being straightforward and honest in all professional and business dealings
- **Objectivity** — not allowing professional judgment to be compromised by bias or conflict of interest
- **Professional competence and due care** — maintaining professional knowledge and professional service, and acting diligently
- **Transparency** — declaring conflicts of interest to all clients, especially when service fees are charged to both the education provider and the prospective student
- **Confidentiality** — respecting and preserving the confidentiality of personal information acquired and not releasing such information to third parties without proper authority
- **Professional behavior** — acting in accordance with relevant laws and regulations and dealing with clients competently, diligently, and fairly
- **Professionalism and purpose** — acting in a manner that will serve the interests of clients and the wider society even at the expense of self-interest; recognizing that dedication to these principles is the means by which the profession can earn the trust and confidence of stakeholder groups (individual clients, the public, business, and government).

United Kingdom: Higher education in the UK is decentralized, with England, Scotland, Wales, and Northern Ireland each having a funding council tasked with assuring quality in the universities and colleges that it supports. Private providers (also known as alternative providers) are currently regulated by the Department for Education. All higher education providers in the

UK are expected to adhere to the [UK Quality Code for Higher Education](#), which provides a common framework and a shared set of expectations regarding the standard of qualifications (or degrees) and the quality of learning opportunities.

The *UK Quality Code* is part of the baseline regulatory requirements, which bring together key reference points for higher education and are a core component of quality assessment within the four nations. While Scotland uses a different set of regulations, the core principles remain the same. The expectations for quality apply from admission through to completion.

Institutions can find additional guidance on recruitment and admission in the publication [Supporting and Enhancing the Experience of International Students in the UK](#), which supplements, but is not part of the *UK Quality Code*. This publication specifically addresses good practice with respect to use of agents, suggesting that institutions consider a number of steps to ensure the quality of their work, including due diligence in hiring, robust supervision, feedback from students, and transparency in communications with students and the public.

In April 2017, the Higher Education and Research Act was passed, substantially changing how higher education in England is regulated. A new regulatory body—The Office for Students—took over on April 1, 2018, and a new regulatory framework took effect in September 2019. Due to these changes, the sector reshaped the *UK Quality Code* to support the changes in England, while maintaining a UK-wide approach to quality and standards.



Australia: Agents working for Australian institutions are subject to a higher level of direct governmental regulations than in other exporting countries. The government regulates agent training and standards through its Education Services for Overseas Students (ESOS) Act 2000 and the *National Code of Practice for Providers of Education and Training to Overseas Students*. A [revised code](#) went into effect on Jan. 1, 2018.

Key elements of the code require registered education providers to:

- have written agreements with agents that represent them
- list authorized agents on the institution’s website
- enter agent details into the government database called the Provider Registration and International Management System (PRISMS)
- have procedures for monitoring the agent and ensuring the agent has up-to-date information
- ensure that agents are transparent, honest, and have good knowledge of the international education system in Australia, including the *Australian International Education and Training Agent Code of Ethics (ACE)*
- have an obligation to take immediate corrective action or terminate their relationship with an agent who engages in any unethical recruitment practices.

The [Australian International Education and Training Agent Code of Ethics \(ACE\)](#), issued by the Australian International Education Association in 2016 with the support of the Australian government, outlines the expected professional behavior of individual agents and agencies. It also builds on the ethical framework of the *London Statement*, ESOS, and the *National Code*.

In a new initiative, the Australian government uses data in the PRISMS system to report to institutions on agent performance regarding student enrollment outcomes (transfers, cancellations, noncompliance, and deferment/suspension). This information is available to the institution only. Implementing this initiative requires agents to agree to a privacy waiver, releasing their information for inclusion in the reports.

Canada: The Canadian federal government does not play a role in regulating or accrediting agents, and most provincial governments don’t address the issue. However, the Immigration and Refugee Protection Act of 2011 expressly prohibits individuals who are not accredited immigration agents from advising individuals about Canadian immigration or representing them as clients during the immigration process.

One exception to the largely provincial absence in the regulation of agents is Manitoba. In January 2016, Manitoba passed an [International Education Act](#). This legislation was initiated as a response to rules issued in 2014 by the Canadian government outlining changes to the International Student Program. The goal of Manitoba’s International Education Act is to protect international students and Manitoba’s reputation as a “high quality destination for international students.” The legislation establishes a registry of recognized education providers and specifies record-keeping and reporting requirements. It also sets forth a code of good practice for these designated education providers, staff recruiters, and contracted agents.



The Canadian Bureau of International Education (CBIE), a nongovernmental membership association dedicated to the advancement of international education, has published a [code of ethics](#) that includes a section on admission and recruitment. Five of the six mandates in this section refer to general good practices in admission, such as the competence of staff and full disclosure to prospective students about costs and English proficiency requirements. A sixth mandate indicates the responsibility of institutions to exercise due diligence with respect to agents.

4. Regulatory Frameworks in Sending Countries

Just as it is vital to be cognizant of the regulatory and legal issues surrounding the recruitment of international students in one's home country, it is equally important to understand the regulatory context of sending countries. This information will help institutions select agents and be aware of the issues that might arise vis-à-vis recruiting and enrolling students from a given country.



China: Approximately one-third of all international students enrolled in the US hail from China. According to Open Doors data, 372,532 Chinese students were enrolled in associate, baccalaureate, masters, and doctoral programs in 2019. [One consulting company](#) estimates that there are some 10,000 registered and unregistered agents operating in China, with the three largest agencies accounting for 30 percent of the market. There are no firm data on the proportion of Chinese students using agents. But given the numbers of agents, it is likely that many students consult with agents during the admission process. Issues of fraudulent credentials and applications from Chinese students have received international attention, thus heightening the importance of ensuring that agents are competent and ethical. [BOSSA-COSSA](#) (the Beijing Overseas Study Association-Chinese Overseas Study Association), representing affiliated membership associations of agents and institutions in China, offers an authentication service for Chinese educational transcripts. In 2013, BOSSA launched a program to certify Beijing-based recruiting agencies.

In 2017, Chinese authorities lifted a 2014 requirement that recruiting agencies secure approval from the relevant provincial authority. However, they still need to go through the formal licensing procedure required of all Chinese businesses. Some observers predict that Chinese students and families will need to be more vigilant in their selection of agents, and institutions may relate to a wider group of agents, perhaps with less certain quality.

Vietnam: The growing demand for higher education has resulted in a rapid expansion in the number of higher education institutions in Vietnam and enrollments in the country, spurring accompanying concerns about quality. The demand for education abroad has also grown. According to the Institute for International Education (IIE), enrollment of Vietnamese students in the United States has increased steadily over the past 16 years (IIE). [Open Doors data](#) indicate that enrollment in associate, baccalaureate, masters, and doctoral programs was 23,277 in 2019.

The regulation of agents has undergone considerable change in the past few years. In 2013, the ministry began requiring that heads of agencies have a university degree or higher and be fluent in at least one foreign language. In addition, agents were required to complete a ministry-sponsored training program and each agency was required to have 500 million dong (about \$22,400 USD) in a bank account to cover financial risks. In July 2016, these requirements were discontinued, opening the agent market more widely to new entrants. The bank deposit requirement was rescinded, but agents were still required to take a training course culminating in an exam and certification. This [relaxation of the regulations](#) is expected to result in an expansion of the number of agents in Vietnam. As is the case with China, institutions should be prepared to encounter a wide variety of agents with varying levels of expertise.

India: The Indian government does not regulate agents. In 2011, a law was proposed to require agents to register, but no such law has gone into effect. More than [30 Indian agencies](#) have been certified by the American International Recruitment Council. Additionally, there is an [Association of Australian Education Representatives in India](#) (AAIRI), founded in 1996, whose members must agree to a [code of ethics and professional standards](#) to join. Members are nominated by the Australian institutions they represent. Membership is open to companies that are registered in India or have government permission to operate in the country. The Association of Indian Universities also has an interest in protecting students; it has published a [student advisory about the equivalency of degrees earned abroad](#). The document provides advice about the requirements for secondary and higher education abroad to be recognized for further study by Indian universities. Such information helps degree-seeking Indian students be more informed in choosing institutions abroad; it is also a potentially useful source of information for agencies.

Conclusion

Regulatory and legal frameworks are never static. Institutions must continually monitor the evolving landscape both at home and abroad. Just as the upcoming revision of the US Higher Education Act could result in changes that directly or indirectly affect the recruitment of international students, other countries are also continually revisiting their legal and quality assurance frameworks for higher education and the regulation of agents. Although institutional integrity and values should be a constant, the rules and regulations are not.