

## Issue Paper #1

### Team I – Program Integrity Issues

**Issue:** Definition of High School Diploma for the Purpose of Establishing Institutional Eligibility to Participate in the Title IV Programs, and Student Eligibility to Receive Title IV Aid

**Statutory cites:** HEA sections 101(a)(1), 101 (b)(2), 102(b)(1)(B) 102(b)(2), 102(c)(1)(B), 102(c)(2), and 484(d)

**Regulatory cites:** 34 CFR 600.2, 600.4(a)(2), 600.5(a)(3), 600.6(a)(2), and 668.32(e)

**Summary question(s):** How can we develop regulations that define a “high school diploma” for the purpose of establishing eligibility to participate in the Federal student aid programs and to ensure that only eligible students receive Federal student aid; and what steps should we take to combat the use of diplomas obtained through diploma mills?

**Summary of issue:** The Higher Education Act of 1965, as amended, requires an institution of higher education participating in the Federal student aid programs to admit as regular students only persons who have obtained a high school diploma or its recognized equivalent (or are beyond the age of compulsory school attendance). In order to be eligible to receive Title IV aid, a student must have a high school diploma or its recognized equivalent, have completed secondary school in a home school setting or pass an independently administered examination approved by the Secretary. Receipt of a high school diploma or its recognized equivalent or completion of secondary schooling through home schooling provides an indication that the student is qualified to begin study at the postsecondary level. There is a regulatory definition of the “recognized equivalent of a high school diploma,” but the term “high school diploma” is not defined in regulations.

A student may self-certify on the FAFSA that he has received a high school diploma or GED or that he has completed secondary school through homeschooling as defined by state law. Basically, if a student does not have a high school diploma or GED and has not completed secondary school through home schooling, the student will have to pass an Ability-to-Benefit test to qualify for student aid. If a student indicates that he has a diploma or GED, the postsecondary institution isn't required to ask for a copy. If, however, the institution requires one for admission, the institution must rely on that copy of the diploma or GED and not on the student's certification alone. Confirming the authenticity of a student's high school experience has become more difficult in part due to the proliferation of high school diploma mills. Institutions that have concerns about the validity of a diploma from a particular school often check with the department of education for the state in which the school is located. If the department has jurisdiction over the high school, it can confirm whether a diploma from the school (which does not

have to be accredited) is recognized by the state. However, some states do not have a means of recognizing even all the legitimate high schools operating in their state, particularly private high schools.

**Comments and questions:** Institutions of higher education are concerned about several issues. One involves the administrative burden related to researching the legitimacy of the high school diploma a student presents. An additional concern relates to situations in which Title IV participating institutions direct students without high school diplomas to high schools with which they appear to have a business relationship.

The Government Accountability Office, in an August 2009 report, recommends that the Department have a clearer, official policy about high school diploma mills. This could take the form of revised regulations. Furthermore, GAO recommends that the Department use information that is already available, such as lists published by States, to provide guidance to institutions of higher education in confirming the validity of high school diplomas.

- How can institutions best confirm the authenticity of a student's high school experience whether it be through the receipt of a high school diploma, homeschooling credentials, diplomas obtained from online training or private schools? Should a high school's recognition by a State agency be required? Should accreditation play any role?
- If States are relied upon to determine a school's legitimacy, how can the Department assist colleges in confirming a diploma's authenticity and the school's approval by a state?
- How can institutions determine the equivalency of high school diplomas received at foreign schools to those obtained in the US?
- Is the FAFSA self certification regarding the receipt of a high school diploma adequate or should it be strengthened?
- Are there certain types of relationships between colleges and high schools that should be prohibited, at least as far as diploma recognition is concerned?

**Updated information since November meeting:**

The following is a list of agencies that we have contacted to determine what steps other agencies are taking in evaluating the legitimacy of high school diplomas and whether those agencies maintain a listing of schools that award valid secondary school credentials and a list of schools that do not:

- The National Collegiate Athletic Association (NCAA)

The NCAA maintains a database of approximately 29,000 high schools, but the academic credentials of some of those high schools do not meet the NCAA initial-eligibility requirements. Although some schools that are not approved under the NCAA's initial eligibility requirements may include schools that are considered diploma mills, there is no indicator to identify them from those that didn't qualify for other reasons.

During the November negotiated rulemaking meetings, we provided the non-Federal negotiators with the NCAA's high school review process. The following NCAA's websites allows you to search by school name or by State the list of schools approved by the NCAA and NCAA's guidance on how to verify a high school diploma:

List of approved core courses from high schools that meet the NCAA's criteria for a core course

[https://web1.ncaa.org/eligibilitycenter/hs/index\\_hs.html](https://web1.ncaa.org/eligibilitycenter/hs/index_hs.html)

The NCAA guidance on how to verify a high school diploma

[http://www.ehow.com/how\\_5003179\\_verify-high-school-diploma.html](http://www.ehow.com/how_5003179_verify-high-school-diploma.html)

- The National Center for Education Statistics (NCES)

The Common Core of Data (CCD), developed in 1986, is the Department of Education's primary database on public elementary and secondary education in the United States. Most of the data is obtained from administrative records maintained by the state education agencies (SEAs). Statistical information is collected annually from public elementary and secondary schools (approximately 97,000) public school districts (approximately 18,000) and the 50 states, the District of Columbia, Department of Defense Schools, and the outlying areas. The SEAs compile CCD requested data into prescribed formats and transmit the information to NCES. The list of public high schools maintained in CCD can be found at <http://www.nces.ed.gov/ccd/schoolsearch/>.

The Private School Universe Survey (PSS), developed in 1989, consists of approximately 33,740 private schools in the U.S. that meet the NCES definition (i.e., a private school is not supported primarily by public funds, provides classroom instruction for one or more of grades K-12 or comparable ungraded levels, and has one or more teachers. Organizations or institutions that provide support for home schooling without offering classroom instruction for students are not included.) The list is updated periodically by matching it with lists provided by nationwide private school associations, state departments of education, and other national private school guides and sources.

The PSS consists of a single survey that is completed biennial by administrative personnel in private schools. Some of the information collected includes: religious

orientation; level of school; size of school; length of school year, length of school day; total enrollment (K-12); number of high school graduates, number of teachers employed; program emphasis. The list of private high schools maintained in PSS can be found at <http://www.nces.ed.gov/surveys/pss/privateschoolsearch/>.

- The College Board

In addition to completing the High School Code Request Form, below are the requirements a school must meet to be assigned a Level I or Level II College Board High School Code:

Level I Code – In order to receive SAT®, PSAT/NMSQT® scores and to receive SAT publications each school must:

- Teach at least through the 10th grade or provide evidence that a 10th grade will be added within the next 12 months
- Have a course of study that leads to a diploma or General Educational Development (GED) certificate
- Have a minimum of 10 students enrolled in grades 9-12
- Accreditation status must be active. Institutions with expired status will not be accepted.

Level II Code – In order to administer the SAT, PSAT/NMSQT and/or AP® Exams each school must meet all the eligibility requirements for a Level I Code AND:

- Offer classroom instruction of the core curriculum courses on-site during the day
- Hold an active Accreditation by one of the agencies/organizations listed on the College Board Approved Accreditation list
- Ensure there are secure locations for storage of testing materials with limited and controlled access to these locations

A list of high schools with an active Level I or Level II Code is maintained through the College Board's Code List Service. There is a monthly service available which updates schools being added or removed.

- Docufide, Inc.

Docufide, Inc is an education records management company that manages, orders, processes and secure delivery of student transcripts. Approximately 10 States currently use Docufide's services. To find out more about Docufide visit their website at <http://www.docufide.com/index.jsp>.

- The United States Department of Defense

The education requirement to enlist differs based on standards that are set by each branch of the military service. A student is classified under the military's three tiered system for education:

- Tier 1 - High School Graduate (HSG) or Higher. An applicant who has attended and completed a 12-year (or grade) program of classroom instruction and possesses a locally issued diploma from the school.
- Tier 2 - Alternate High School Credential Holder: An applicant who possesses a GED or other test-based high school equivalency certificate or diploma.
- Tier 3 - Non-HSG. An applicant who holds none of the credentials in Tiers 1 or 2. This tier includes those who do not complete a high school exit exam.

Based on information obtained from a Marine recruiter in Maryland, recruiters are either stationed at the high school or are familiar with the high school diplomas issued from Maryland, DC and Virginia. If the recruiter receives a diploma that is unfamiliar, the recruiter researches the validity of the diploma by looking online, calling the school, visiting the school or obtains a copy of the transcript from the school. There is no database listing of high schools that is maintained that is available to the public.

**Draft Regulatory Language:**

1 §668.16 Standards of administrative capability.

2

3 To begin and to continue to participate in any Title IV, HEA program, an institution shall  
4 demonstrate to the Secretary that the institution is capable of adequately administering  
5 that program under each of the standards established in this section. The Secretary  
6 considers an institution to have that administrative capability if the institution—

7

8 \* \* \*

9

10 (p) Establishes and maintains listings of secondary schools (or other entities  
11 providing a comparable secondary program of study) in the following three categories--

12 (1) Secondary schools that the institution has determined award high school  
13 diplomas that are acceptable for title IV, HEA program purposes, based upon its prior  
14 experience admitting students from those secondary schools, or based upon its

1 independent research that is kept with the institution's listings. That research may  
2 include determining whether a secondary school--

3 (i) Awards a high school diploma that is fully aligned with the State's academic  
4 content standards; or

5 (ii) Awards a secondary school credential that requires the completion of an  
6 academic component that prepares a student to pursue postsecondary education  
7 successfully;

8 (2) Secondary schools that the institution has determined award high school  
9 diplomas that are not acceptable for title IV, HEA program purposes; and

10 (3) Secondary schools identified by students seeking admission to the institution  
11 that the institution has preliminarily determined are acceptable for title IV, HEA program  
12 purposes. Institutions may make preliminary determinations that these secondary schools  
13 are acceptable under the following conditions--

14 (i) The institution obtains a copy of the high school diploma and keeps it in the  
15 student's file;

16 (ii) There is no discrepant information in the student's documentation that calls  
17 into question the validity of the high school diploma; and

18 (iii) The institution---

19 (A) Must complete its independent determination of whether to include the  
20 secondary school on the acceptable list within 90 days from the date the institution made  
21 its preliminary determination; and

22 (B) Cannot admit another student from that source before it completes the  
23 evaluation.

24 (4) In making a determination that a secondary school is not an acceptable source  
25 to award high school diplomas for title IV, HEA program purposes, an institution shall  
26 consider if that school or entity--

27 (i) Awards for a fee a secondary school credential that includes little to no  
28 academic component;

29 (ii) Appears to have awarded a high school diploma to the student applicant from  
30 a location or at a time that is inconsistent with the other information provided by the  
31 student applicant; or

- 1 (iii) Appears on a list of questionable secondary schools that the institution has
- 2 obtained from an outside source and determined to be reliable.

## Issue Paper #2

### Team I – Program Integrity Issues

<b>Issue:</b>	Ability to Benefit
<b>Statutory cites:</b>	HEA section 484(d)
<b>Regulatory cites:</b>	34 CFR 668.32(e)(2) and subpart J

**Summary question(s):** How do we address concerns raised by the Government Accountability Office (GAO) about the analyses ability-to-benefit (ATB) test publishers prepare and submit to the Department? What should we consider as we implement a new ATB provision included in the Higher Education Opportunity Act (HEOA)?

**Summary of issue:** Students who have neither a high school diploma nor its equivalent may demonstrate their ability to benefit from the education provided, and receive Federal student financial aid funds, by taking a Department-approved ATB test or, as added by the HEOA, by satisfactorily completing six credits of college work that are applicable to a degree or certificate offered by the institution.

#### ATB Test Requirements

The Department is responsible for overseeing the ATB test publishers, who are responsible for certifying and monitoring test administrators to ensure the independent and proper administration of ATB tests. Test publishers are required to conduct and submit an analysis of test scores every three years to identify any test irregularities that would suggest ATB tests are not being administered in accordance with test rules.

In August 2009, GAO issued a report which cited the Department for weak oversight of the ATB test requirements and recommended that the ATB regulations be revised to strengthen controls over the ATB testing process. GAO identified the following problems with the current regulations:

(1) The regulations require test publishers to conduct test score analyses only every three years. This means it is possible for test administrators who are administering tests improperly to go undetected for up to three years.

(2) The regulations do not specifically require test publishers to follow up on test score irregularities or report any corrective actions to the Department. Therefore, the Department has no way of knowing whether actual violations occurred or how the test publishers dealt with any violations they identified.

(3) While the current regulations require that test publishers decertify test administrators who fail to administer tests properly, the regulations do not require test publishers to report to the Department on implementation of their decertification process. This means the Department has no assurance that test administrators who violate test rules are decertified. Further, the Department has no way of determining if test administrators decertified by one publisher are administering tests for other publishers.

Unlike ATB tests submitted for approval by test publishers, if a State submits its ATB test and the Secretary approves it, the test is approved for use until that approval is

revoked. In addition, under current regulations, States are not required to submit 3-year test anomaly studies in the same way that test publishers are.

States also have the option of seeking approval from the Secretary for a State process that is an alternative to achieving a passing score on an approved, independently administered test. Once a State has had its process approved, there is no requirement that the State's process be reevaluated.

It has been fourteen years since subpart J was published. In the intervening time, some of the terminology used in the subpart has changed, and we are using technology to a larger extent. We have also identified some definitions which should be modified to reflect statutory changes to other laws, such as the Individuals with Disabilities Education Act (IDEA). We plan to incorporate necessary updates to reflect these changes.

#### Completion of Six Credit Hours

The HEOA added a second method for students to show that they have the ability to benefit. Students who satisfactorily complete six credits of college work, or the equivalent amounts of coursework, that are applicable to a degree or certificate offered by the school qualify to receive title IV aid.

For the purpose of implementing this provision, there needs to be a determination of the appropriate number of clock hours a student in a clock hour program needs to complete that is equivalent to six credit hours. There are at least two ways of determining equivalency:

*225 hours:* 6 credit hours is one-fourth of the minimum 24 credit hours that qualifies as full-time enrollment over one academic year. The minimum clock hours for a full academic year is 900. One-fourth of 900 is 225 hours.

*180 hours:* Under the clock hour/credit hour conversion formula one semester credit equals 30 clock hours. Multiplying six units times 30 yields 180 hours.

#### **Comments and questions:**

- Should more frequent reports be required of ATB test publishers?
- Should State ATB tests also be submitted for periodic review instead of being approved indefinitely? How frequently?
- Should the requirement that test publishers submit 3-year test anomaly studies be extended to include State ATB tests, as well?
- Is there adequate assurance that test administrators are sufficiently independent from the schools that use their services?
- In addition to determining the clock-hour conversion, what additional clarifications are needed to effectively implement the six-credit provision?

#### **Updated information since November meeting:**

We have asked the Office of Civil Rights (OCR) and Office of Special Education Programs (OSERS/OSEP) to look at the language regarding testing students with disabilities. We may be updating that language and modifying references to the

Rehabilitation Act, the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

**Draft Regulatory Language:**

**§ 668.32 Student eligibility—general.**

1 A student is eligible to receive title IV, HEA program assistance if the student—

2 \* \* \* \* \*

3 (e)(1) Has a high school diploma or its recognized equivalent;

4 (2) Has obtained a passing score specified by the Secretary on an independently  
5 administered test in accordance with subpart J of this part;

6 (3) Is enrolled in an eligible institution that participates in a State “process” approved by  
7 the Secretary under subpart J of this part; ~~or~~

8 (4) Was home-schooled, and either—

9 (i) Obtained a secondary school completion credential for home school (other than a high  
10 school diploma or its recognized equivalent) provided for under State law; or

11 (ii) If State law does not require a home-schooled student to obtain the credential  
12 described in paragraph (e)(4)(i) of this section, has completed a secondary school  
13 education in a home school setting that qualifies as an exemption from compulsory  
14 attendance requirements under State law; or

(5) Has been determined by the institution to have the ability to benefit from the education or training offered based on the satisfactory completion of 6 semester hours, 6 quarter hours, or (xxx) clock hours that are applicable toward a degree or certificate offered by the institution.

**Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process**

**§ 668.141 Scope.**

- 1 (a) This subpart sets forth the provisions under which a student who has neither a high  
2 school diploma nor its recognized equivalent may become eligible to receive Title IV,  
3 HEA program funds by—
- 4 (1) Achieving a passing score, specified by the Secretary, on an independently  
5 administered test approved by the Secretary under this subpart; or  
6 (2) Being enrolled in an eligible institution that participates in a State process approved  
7 by the Secretary under this subpart.
- 8 (b) Under this subpart, the Secretary sets forth—
- 9 (1) The procedures and criteria the Secretary uses to approve tests;  
10 (2) The basis on which the Secretary specifies a passing score on each approved test;  
11 (3) The procedures and conditions under which the Secretary determines that an approved  
12 test is independently administered; ~~and~~
- 13 (4) The information that a test publisher or a State must submit, as part of its test  
14 submission, to explain the methodology it will use for the required test anomaly studies;  
15 (5) The requirement that a test publisher or a State: (i) have a process to identify and  
16 follow up on test score irregularities; (ii) take action to decertify test administrators if the  
17 test publisher or the State determines that tests have been administered improperly; and  
18 (iii) report to the Secretary the names of any test administrators it decertifies and any  
19 other actions taken as a result of test score analyses; and
- 20 ~~(4)~~ (6) The procedures and conditions under which the Secretary determines that a State  
21 process demonstrates that students ~~in~~ who complete the process have the ability to benefit  
22 from the education and training being offered to them.

23 (Authority: 20 U.S.C. 1091(d))

**§ 668.142 Special definitions.**

25 The following definitions apply to this subpart:

26 *Assessment center:* A ~~center-~~ facility that—

- 1 (1) Is located at an eligible public or private nonprofit institution of higher education that  
2 provides two-year or four-year degrees, or qualifies as an eligible public-vocational  
3 institution, i.e.—a “postsecondary vocational institution;”<sup>22</sup>
- 4 (2) Is responsible for gathering and evaluating information about individual students for  
5 multiple purposes, including appropriate course placement;
- 6 (3) Is independent of the admissions and financial aid processes at the institution at which  
7 it is located;
- 8 (4) Is staffed by professionally trained personnel; ~~and~~
- 9 (5) Uses test administrators to administer tests approved by the Secretary under this  
10 subpart; and
- 11 ~~(5)~~ (6) Does not have as its primary purpose the administration of ability-to-benefit tests.
- 12 *Computer-based test:* A test taken by a student on a computer and scored by a computer.
- 13 *Disabled student:* A student who has a physical or mental impairment that substantially  
14 limits one or more major life activities, has a record of such an impairment, or is regarded  
15 as having such an impairment.
- 16 *General learned abilities:* Cognitive operations, such as deductive reasoning, reading  
17 comprehension, or translation from graphic to numerical representation, that may be  
18 learned in both school and non-school environments.
- 19 *Independent test administrator. A test administrator who—*
- 20 (i) Has no current or prior financial or ownership interest in the institution, its affiliates,  
21 or its parent corporation, other than the interest obtained through its agreement to  
22 administer the test, and has no controlling interest in any other educational institution;
- 23 (ii) Is not a current or former employee of or consultant to the institution, its affiliates, or  
24 its parent corporation, a person in control of another institution, or a member of the  
25 family of any of these individuals;
- 26 (iii) Is not a current or former member of the board of directors, a current or former  
27 employee of or a consultant to a member of the board of directors, chief executive  
28 officer, chief financial officer of the institution or its parent corporation or at any other  
29 institution, or a member of the family of any of the above individuals; and
- 30 (iv) Is not a current or former student of the institution.

1 *Non-native speaker of English:* A person whose first language is not English and who is  
2 not fluent in English.

3 *Secondary school level:* As applied to “content,” “curricula,” or “basic verbal and  
4 quantitative skills,” refers to basic knowledge or skills generally learned in the 9th  
5 through 12th grades in United States secondary schools.

6 *Test administrator:* An individual who ~~may give tests under this subpart~~ is certified by  
7 the test publisher (or the State, in the case of an approved State test or assessment) to  
8 administer tests approved under this subpart in accordance with the instructions provided  
9 by the test publisher (or the State) and to protect the test and the test results from  
10 improper disclosure or release, and who is not compensated on the basis of test outcomes.

11 *Test item:* A question on a test.

12 *Test publisher:* An individual, organization, or agency that owns a registered copyright of  
13 a test, or is licensed by the copyright holder to sell or distribute a test.

14 (Authority: 20 U.S.C. 1091(d))

15 **§ 668.143 Approval of State tests or assessments.**

16 (a) A State that wishes to have its tests or other assessments approved by the Secretary  
17 under this subpart shall submit an application to the Secretary at such time and in such  
18 manner as the Secretary may prescribe. The application shall contain all the information  
19 necessary for the Secretary to determine that the tests or assessments ~~The Secretary~~  
20 ~~approves tests or other assessments submitted by a State that~~ the State uses ~~to~~ measure a  
21 student's skills and abilities for the purpose of determining whether the student has the  
22 skills and abilities the State expects of a high school graduate in that State. A State shall  
23 submit with its application—

24 (1) Those tests and assessments it wishes to have approved, the passing scores on those  
25 tests and assessments, and the educational standards those tests and assessments measure;

26 (2) An explanation of how the tests, assessments, and passing scores are appropriate in  
27 light of the State's educational standards;

28 (3) An assurance that the tests and assessments will be administered in an independent,  
29 fair, and secure manner; and

30 (4) A description of retesting procedures and the analysis upon which the criteria for  
31 retesting are based;

1 (5) Other evidence establishing the test's compliance with the criteria for approval of  
2 tests as provided in §668.146;

3 (6) A description of its test administrator certification process that provides—

4 (i) How the State will determine that the test administrator has the necessary training,  
5 knowledge, and skill to test students in accordance with the State's requirements; and

6 (ii) How the State will determine that the test administrator has the ability and facilities  
7 to keep its test secure against disclosure or release; and

8 (7) A description of the test anomaly analysis that will be conducted by the State for  
9 submission to the Secretary that includes—

10 (i) An explanation of how the State will identify potential test irregularities and make a  
11 determination that test irregularities have occurred;

12 (ii) An explanation of the process and procedures for corrective action when the State  
13 determines that test irregularities have occurred, up to and including decertification of a  
14 certified test administrator; and

15 (iii) Information on when and how the State will notify a test administrator, the  
16 Secretary, and the institutions for which the test administrator had previously provided  
17 testing services, that the test administrator has been decertified.

18 (8) The name, address, telephone number, and e-mail address of a contact person to  
19 whom the Secretary may address inquiries.

20 (b) The Secretary ~~approves~~ reviews passing scores or other methods of evaluation  
21 established by the State for each test or assessment described in paragraph (a) of this  
22 section and the other information the State submits with its application.

23 (c) If the Secretary approves a State's tests and assessments and the passing scores on  
24 those tests and assessments under paragraphs (a) and (b) of this section, that test or  
25 assessment may be used, for purposes of section 484(d) of the HEA, only for students  
26 who attend eligible institutions located in that State.

27 ~~(d) If a State wishes to have the Secretary approve its tests or assessments under this~~  
28 ~~section, the State shall—~~

29 ~~(1) Submit to the Secretary those tests and assessments, its passing scores on those tests~~  
30 ~~and assessments, and the educational standards those tests and assessments measure at~~  
31 ~~such time and in such manner as the Secretary may prescribe;~~

1 ~~(2) Provide the Secretary with an explanation of how the tests, assessments, and passing~~  
2 ~~scores are appropriate in light of the State's educational standards; and~~

3 ~~(3) Provide the Secretary with an assurance that the tests and assessments will be~~  
4 ~~administered in an independent, fair, and secure manner.~~

5 (Approved by the Office of Management and Budget under control number 1840–0627)

6 (Authority: 20 U.S.C. 1091(d))

7 **§ 668.144 Application for test approval.**

8 Except as provided in §668.143—

9 (a) The Secretary only reviews tests under this subpart that are submitted by the publisher  
10 of that test;

11 (b) A test publisher that wishes to have its test approved by the Secretary under this  
12 subpart must submit an application to the Secretary at such time and in such manner as  
13 the Secretary may prescribe. The application shall contain all the information necessary  
14 for the Secretary to approve the test under this subpart, including but not limited to, the  
15 information contained in this section; and

16 (c) A test publisher shall include with its application—

17 (1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests and  
18 abbreviated tests for which approval is being sought;

19 (2) The name, address, ~~and~~ telephone number, and e-mail address of a contact person to  
20 whom the Secretary may address inquiries;

21 (3) Each edition, ~~and~~ form, level and subtest of the test for which the publisher requests  
22 approval;

23 (4) The distribution of test scores for each edition, form, level, or sub-test, ~~or partial~~  
24 ~~battery~~, for which approval is sought, that allows the Secretary to prescribe the passing  
25 score for each test in accordance with §668.147;

26 (5) Documentation of test development, including a history of the test's use;

27 (6) Norming data and other evidence used in determining the distribution of test scores;

28 (7) Material that defines the content domains addressed by the test;

29 ~~(8) For tests first published five years or more before the date submitted to the Secretary~~  
30 ~~for review and approval, d~~Documentation of periodic reviews of the content and

1 specifications of the test to ensure that the test ~~continues to~~ reflect<sup>s</sup> secondary school  
2 level verbal and quantitative skills;

3 (9) If a test ~~being submitted is a revision of has been revised from~~ the most recent edition  
4 approved by the Secretary, an analysis of the revisions, including the reasons for the  
5 revisions, the implications of the revisions for the comparability of scores on the current  
6 test to scores on the previous test, and data from validity studies of the test undertaken  
7 subsequent to the revisions;

8 (10) A description of the manner in which test-taking time was determined in relation to  
9 the content representativeness requirements in §668.146(b)(2), and an analysis of the  
10 effects of time on performance;

11 (11) A technical manual that includes—

12 (i) An explanation of the methodology and procedures for measuring the reliability of the  
13 test;

14 (ii) Evidence that different forms of the test, including, if applicable, short forms, are  
15 comparable in reliability;

16 (iii) Other evidence demonstrating that the test permits consistent assessment of  
17 individual skill and ability;

18 (iv) Evidence that the test was normed using—

19 (A) Groups that were of sufficient size to produce defensible standard errors of the mean  
20 and were not disproportionately composed of any race or gender; and

21 (B) A contemporary population representative of persons who are beyond the usual age  
22 of compulsory school attendance in the United States;

23 (v) Documentation of the level of difficulty of the test;

24 (vi) Unambiguous scales and scale values so that standard errors of measurement can be  
25 used to determine statistically significant differences in performance; ~~and~~

26 (vii) Additional guidance on the interpretation of scores resulting from any modifications  
27 of the tests for persons with documented disabilities;

28 ~~(viii) Evidence that the test complies with Section 504 of the Rehabilitation Act, as~~  
29 ~~amended; and~~

30 ~~(ix) Evidence that computerized tests comply with Section 508 of Rehabilitation Act, as~~  
31 ~~amended.~~

1 (12) The manual provided to test administrators containing procedures and instructions  
2 for test security and administration, and the forwarding of tests to the test publisher;

3 (13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-  
4 test to demonstrate compliance with the required secondary school level criterion  
5 specified in §668.146(b);

6 ~~(14) For performance-based tests or tests containing performance-based sections, a~~  
7 ~~description of the training or certification required of test administrators and scorers by~~  
8 ~~the test publisher;~~

9 ~~(15)~~ (14) A description of retesting procedures and the analysis upon which the criteria  
10 for retesting are based; ~~and~~

11 ~~(16)~~ (15) Other evidence establishing the test's compliance with the criteria for approval  
12 of tests as provided in §668.146;

13 (16) A description of its test administrator certification process that provides—

14 (i) How the test publisher will determine that the test administrator has the necessary  
15 training, knowledge, and skill to test students in accordance with the test publisher's  
16 requirements; and

17 (ii) How the test publisher will determine that the test administrator has the ability and  
18 facilities to keep its test secure against disclosure or release; and

19 (17) A description of the test anomaly analysis that will be conducted by the test  
20 publisher for submission to the Secretary that includes—

21 (i) An explanation of how the test publisher will identify potential test irregularities and  
22 make a determination that test irregularities have occurred;

23 (ii) An explanation of the process and procedures for corrective action when the test  
24 publisher determines that test irregularities have occurred, up to and including  
25 decertification of a certified test administrator; and

26 (iii) Information on when and how the test publisher will notify a test administrator, the  
27 Secretary, and the institutions for which the test administrator had previously provided  
28 testing services, that the test administrator has been decertified.

29 (Approved by the Office of Management and Budget under control number 1840-0627)

30 (Authority: 20 U.S.C. 1091(d))

31 **§ 668.145 Test approval procedures.**

1 ~~Except as provided in §668.143—~~

2 (a)(1) When the Secretary receives a complete application from a test publisher or a  
3 State, the Secretary selects one or more experts in the field of educational testing and  
4 assessment, who possess appropriate advanced degrees and experience in test  
5 development or psychometric research, to determine whether the test meets the  
6 requirements for test approval contained in §§668.143, 668.146, 668.147, 668.148, or  
7 668.149, as appropriate, and to advise the Secretary of their determinations;

8 (2) If the test involves a language other than English, the Secretary selects at least one  
9 individual ~~described in paragraph (a)(1) of this section~~ who is fluent in the language in  
10 which the test is written to collaborate with the testing experts described in paragraph  
11 (a)(1) of this section and advise the Secretary on whether the test meets the additional  
12 criteria, provisions, and conditions for test approval contained in §§668.148 and 668.149;

13 (3) For test batteries that contain multiple sub-tests measuring content domains other  
14 than verbal and quantitative domains, the Secretary reviews only those sub-tests covering  
15 verbal and quantitative domains.

16 ~~(b) The Secretary determines whether the test publisher's test meets the criteria and~~  
17 ~~requirements for approval after taking the advice of the experts into account;~~

18 ~~(e)(b)(1)~~ (1) If the Secretary determines that a test satisfies the criteria and requirements for  
19 test approval, the Secretary notifies the test publisher or the State of the Secretary's  
20 decision, and publishes the name of the test and the passing scores in the Federal  
21 Register.

22 (2) If the Secretary determines that a test does not satisfy the criteria and requirements for  
23 test approval, the Secretary notifies the test publisher or the State of the Secretary's  
24 decision, and the reasons why the test did not meet those criteria and requirements.

25 (3) The test publisher or the State may request that the Secretary reevaluate the  
26 Secretary's decision. Such a request must be accompanied by—

27 (i) Documentation and information that address the reasons for the non-approval of the  
28 test; and

29 (ii) An analysis of why the information and documentation submitted meet the criteria  
30 and requirements for test approval notwithstanding the Secretary's earlier decision to the  
31 contrary.

1 ~~(d)~~ (c)(1) The Secretary approves a test for a period not to exceed five years from the date  
2 the notice of approval is published in the Federal Register. ~~of the Secretary's written~~  
3 ~~notice to the test publisher.~~

4 (2) The Secretary extends the approval period of a test to include the period of review if  
5 the test publisher or the State re-submits the test for review and approval under §668.143  
6 or §668.144 at least six months before the date on which the test approval is scheduled to  
7 expire;

8 ~~(e)~~ (d)(1) The Secretary's approval of a test may be ~~withdrawn~~ revoked if the Secretary  
9 determines that the test publisher or the State violated any terms of the agreement  
10 described in §668.150, or that the information the test publisher or the State submitted as  
11 a basis for approval of the test was inaccurate;

12 ~~(f)~~ (2) If the Secretary revokes approval of a previously approved test, the Secretary  
13 publishes a notice of that revocation in the Federal Register. The revocation becomes  
14 effective—

15 (i) One hundred and twenty ~~120~~ days from the date the notice of revocation is published  
16 in the Federal Register; or

17 (ii) An earlier date specified by the Secretary in a notice published in the Federal  
18 Register. ~~;~~ and

19 ~~(g) For test batteries that contain multiple sub-tests measuring content domains other than~~  
20 ~~verbal and quantitative domains, the Secretary reviews only those subtests covering~~  
21 ~~verbal and quantitative domains.~~

22 (Approved by the Office of Management and Budget under control number 1840-0627)

23 (Authority: 20 U.S.C. 1091(d))

24 **§ 668.146 Criteria for approving tests.**

25 ~~Except as provided in §668.143—~~

26 (a) Except as provided in §668.148, the Secretary approves a test under this subpart if the  
27 test meets the criteria set forth in paragraph (b) of this section and the test publisher or the  
28 State satisfies the requirements set forth in paragraphs (c) and (d) of this section~~;~~

29 (b) To be approved under this subpart, a test shall—

30 (1) Assess secondary school level basic verbal and quantitative skills and general learned  
31 abilities;

1 (2) Sample the major content domains of secondary school level verbal and quantitative  
2 skills with sufficient numbers of questions to—  
3 (i) Adequately represent each domain; and  
4 (ii) Permit meaningful analyses of item-level performance by students who are  
5 representative of the contemporary population beyond the age of compulsory school  
6 attendance and have earned a high school diploma;  
7 (3) Require appropriate test-taking time to permit adequate sampling of the major content  
8 domains described in paragraph (a)(2) of this section;  
9 (4) Have all forms (including short forms) comparable in reliability;  
10 (5) ~~Have, in the case of a~~ ~~If the~~ test ~~that~~ is revised, ~~have~~ new scales, scale values, and  
11 scores that are demonstrably comparable to the old scales, scale values, and scores; ~~and~~  
12 (6) Meet all primary and applicable conditional and secondary standards for test  
13 construction provided in the 1985 edition of the *Standards for Educational and*  
14 *Psychological Testing*, with amendments dated June 2, 1989, prepared by a joint  
15 committee of the American Educational Research Association, the American  
16 Psychological Association, and the National Council on Measurement in Education  
17 **[Note: need to check for current version and appropriate citation]**<sup>1</sup> incorporated by  
18 reference in this section. Incorporation by reference of this document has been approved  
19 by the Director of the Office of the Federal Register pursuant to the Director's authority  
20 under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the  
21 Department of Education, Office of Postsecondary Education, Room 4318, ROB-3, 600  
22 Independence Avenue, S.W., Washington, D.C. 20202 and at the National Archives and  
23 Records Administration (NARA). For information on the availability of this material at  
24 NARA, call 202-741-6030, or go to:  
25 [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)  
26 . The standards may be obtained from the American Psychological Association, Inc., 750  
27 First Street, N.W., Washington, DC 20026. **[Note: need to verify address]**<sup>2</sup>; ~~and~~

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<sup>1</sup> The latest version of the Standards for Educational and Psychological Testing is from 1999 (<http://www.apa.org/science/standards.html>).

<sup>2</sup> The address for the APA is correct but the zip code should be 20002-4242. According to the noted website, a copy of the publication can be obtained by sending a request to the AERA.

1 (7) Have the test publisher's or State's guidelines for retesting, including time between  
2 test-taking, ~~be~~ based on empirical analyses that are part of the studies of test reliability. ~~;~~  
3 ~~and~~

4 (c) In order for a test to be approved under this subpart, a test publisher or a State shall—

5 (1) Include in the test booklet or package—

6 (i) Clear, specific, and complete instructions for test administration, including  
7 information for test takers on the purpose, timing, and scoring of the test; and

8 (ii) Sample questions representative of the content and average difficulty of the test;

9 (2) Have two or more secure, equated, alternate forms of the test;

10 (3) Except as provided in §§668.148 and 668.149, provide tables of distributions of test  
11 scores which clearly indicate the mean score and standard deviation for high school  
12 graduates who have taken the test within three years prior to the date ~~on~~ that the test is  
13 submitted to the Secretary for approval under §668.143 or §668.144;

14 (4) Norm the test with—

15 (i) Groups that were of sufficient size to produce defensible standard errors of the mean  
16 and were not disproportionately composed of any race or gender; and

17 (ii) A contemporary population representative of persons who are beyond the usual age of  
18 compulsory school attendance in the United States; and

19 (5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a  
20 distribution of test scores as described in paragraph (c)(3) of this section that allows the  
21 Secretary to prescribe either—

22 (i) A passing score for each sub-test; or

23 (ii) One composite passing score for verbal skills and one composite passing score for  
24 quantitative skills.

25 (d) In addition, for a test to be approved by the Secretary, the Secretary must make a  
26 determination that the information the test publisher or State submitted in accordance  
27 with §668.143(a)(7) or §668.144(c)(17) provides adequate assurance that the test  
28 publisher or State will conduct rigorous test anomaly analyses and take appropriate action  
29 if test administrators do not comply with testing procedures.

30 (Approved by the Office of Management and Budget under control number 1840–0627)

31 (Authority: 20 U.S.C. 1091(d))

1 **§ 668.147 Passing scores.**

2 Except as provided in §§668.143, 668.148 and 668.149, to demonstrate that a test taker  
3 has the ability to benefit from the education and training offered, the Secretary specifies  
4 that the passing score on each approved test is one standard deviation below the mean for  
5 students with high school diplomas who have taken the test within three years before the  
6 date on which the test is submitted to the Secretary for approval.

7 (Authority; 20 U.S.C. 1091(d))

8 **§ 668.148 Additional criteria for the approval of certain tests.**

9 ~~Except as provided in §668.143—~~

10 (a) In addition to satisfying the criteria in §668.146, to be approved by the Secretary, a  
11 test ~~or a test publisher~~ must meet the following criteria, if applicable:

12 ~~(1) In the case of a test that is performance based, or includes performance based~~  
13 ~~sections, for measuring writing, speaking, listening, or quantitative problem-solving~~  
14 ~~skills, the test publisher must provide—~~

15 ~~(i) A minimum of four parallel forms of the test; and~~

16 ~~(ii) A description of the training provided to test administrators, and the criteria under~~  
17 ~~which trained individuals are certified to administer and score the test.~~

18 ~~(2)~~ (1) In the case of a test developed for a non-native speaker of English who is enrolled  
19 in a program that is taught in his or her native language, the test must be—

20 (i) Linguistically accurate and culturally sensitive to the population for which the test is  
21 designed, regardless of the language in which the test is written;

22 (ii) Supported by documentation detailing the development of normative data;

23 (iii) If translated from an English version, supported by documentation of procedures to  
24 determine its reliability and validity with reference to the population for which the  
25 translated test was designed;

26 (iv) Developed in accordance with guidelines provided in the 1985 edition of the

27 “Testing Linguistic Minorities” section of the *Standards for Educational and*

28 *Psychological Testing*, with amendments dated June 2, 1989, prepared by a joint

29 committee of the American Educational Research Association, the American

30 Psychological Association, and the National Council on Measurement in Education

31 incorporated by reference in this section. Incorporation by reference of this document has

1 been approved by the Director of the Office of the Federal Register pursuant to the  
2 Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated  
3 document is on file at the Department of Education, Office of Postsecondary Education,  
4 Room 4318, ROB-3, 600 Independence Avenue, S.W., Washington, D.C. 20202 and at  
5 the National Archives and Records Administration (NARA). For information on the  
6 availability of this material at NARA, call 202-741-6030, or go to:

7 [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)

8 . The standards may be obtained from the American Psychological Association, Inc., 750  
9 First Street, N.W., Washington, DC 20026; and

10 **[Note: need to check for current edition and appropriate citation.]**

11 (v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly  
12 indicates the mean score and standard deviation for Spanish-speaking students with high  
13 school diplomas who have taken the test within 5 years before the date on which the test  
14 is submitted to the Secretary for approval; and

15 (B) If the test is in a language other than Spanish, accompanied by a recommendation for  
16 a provisional passing score based upon performance of a sample of test takers  
17 representative of the intended population and large enough to produce stable norms.

18 ~~(3)~~ (2) In the case of a test that is modified for use for persons with disabilities, the test  
19 publisher or State must—

20 (i) Follow guidelines provided in the “Testing People Who Have Handicapping  
21 Conditions” section of the *Standards for Educational and Psychological Testing*; **[Note:**  
22 **need to check for current edition and appropriate citation.]**

23 (ii) Provide documentation of the appropriateness and feasibility of the modifications  
24 relevant to test performance; and

25 (iii) Recommend passing score(s) based on the previous performance of test-takers with  
26 disabilities.

27 ~~(4)~~ (3) In the case of a computer-based test, the test publisher or State must—

28 (i) Provide documentation to the Secretary that the test complies with the basic principles  
29 of test construction and standards of reliability and validity as promulgated in the  
30 *Standards for Educational and Psychological Testing*, as well as specific guidelines set  
31 forth in the American Psychological Association's *Guidelines for Computer-based Tests*

1 *and Interpretations* (1986); [**Note: need to check for current edition and appropriate**  
2 **citation.**]

3 (ii) Provide test administrators with instructions for familiarizing test takers with  
4 computer hardware prior to test-taking; and

5 (iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are  
6 generated from an item pool, provide documentation of the methods of item selection for  
7 alternate forms; and

8 (b) If a test is designed solely to measure the English language competence of non-native  
9 speakers of English—

10 (1) The test must meet the criteria set forth in §668.146(b)(6), and §668.146 (c)(1), (c)(2),  
11 and (c)(4); and

12 (2) The test publisher must recommend a passing score based on the mean score of test  
13 takers beyond the age of compulsory school attendance who entered U.S. high school  
14 equivalency programs, formal training programs, or bilingual vocational programs.

15 (Approved by the Office of Management and Budget under control number 1840–0627)

16 (Authority: 20 U.S.C. 1091(d))

17 **§ 668.149 Special provisions for the approval of assessment procedures for special**  
18 **populations for whom no tests are reasonably available.**

19 If no test is reasonably available for persons with disabilities or students whose native  
20 language is not English and who are not fluent in English, so that no test can be approved  
21 under §§668.146 or 668.148 for these students, the following procedures apply:

22 (a) *Persons with disabilities.* (1) The Secretary considers a modified test or testing  
23 procedure, or instrument that has been scientifically developed specifically for the  
24 purpose of evaluating the ability to benefit from postsecondary training or education of  
25 disabled students to be an approved test for purposes of this subpart provided that the  
26 testing procedure or instrument measures both basic verbal and quantitative skills at the  
27 secondary school level.

28 (2) The Secretary considers the passing scores for these testing procedures or instruments  
29 to be those recommended by the test developer, provided that the test administrator—

30 (i) Uses those procedures or instruments;

- 1 (ii) Maintains appropriate documentation, including a description of the procedures or  
2 instruments, their content domains, technical properties, and scoring procedures; and  
3 (iii) Observes recommended passing scores.

4 (b) *Students whose native language is not English.* The Secretary considers a test in a  
5 student's native language for a student whose native language is not English to be an  
6 approved test under this subpart if—

- 7 (1) The Secretary has not approved any test in that native language;  
8 (2) The test was not previously rejected for approval by the Secretary;  
9 (3) The test measures both basic verbal and quantitative skills at the secondary school  
10 level; and  
11 (4) The passing scores and the methods for determining the passing scores are fully  
12 documented.

13 (Approved by the Office of Management and Budget under control number 1840–0627)

14 (Authority: 20 U.S.C. 1091(d))

15 **§ 668.150 Agreement between the Secretary and a test publisher or a State.**

16 (a) If the Secretary approves a test under this subpart, the test publisher or the State must  
17 enter into an agreement with the Secretary that contains the provisions set forth in  
18 paragraph (b) of this section before an institution may use the test to determine a student's  
19 eligibility for Title IV, HEA program funds.

20 (b) The agreement between a test publisher or a State and the Secretary provides that the  
21 test publisher or the State shall—

- 22 (1) Allow only test administrators that it certifies to give its test;  
23 (2) Require each test administrator it certifies to provide the test publisher or the State  
24 with a certification statement that indicates he or she is not currently decertified.

25 ~~(2)~~ (3) Only C certify test administrators who ~~have~~—

26 (i) ~~Have F~~ the necessary training, knowledge, and skill to test students in accordance with  
27 the test publisher's or the State's testing requirements; ~~and~~

28 (ii) ~~Have F~~ the ability and facilities to keep its test secure against disclosure or release;  
29 and

1 ~~(3)~~ (4) Decertify a test administrator for a period of three years ~~that coincides with the~~  
2 ~~period for which the publisher's test is approved~~ if the test publisher or the State finds that  
3 the test administrator—

4 (i) Has ~~repeatedly~~ failed to give its test in accordance with the test publisher's the State's  
5 instructions;

6 (ii) Has not kept the test secure;

7 (iii) Has compromised the integrity of the testing process; or

8 (iv) Has given the test in violation of the provisions contained in §668.151;

9 (5) Immediately notify the test administrator, the Secretary and the schools where the  
10 test administrator previously administered approved tests when the test publisher or the  
11 State decertifies a test administrator;

12 (6) Report to the Secretary if the test publisher or the State certifies a previously  
13 decertified test administrator after the three year period specified in paragraph (b)(4) of  
14 this section;

15 ~~(4)~~ (7) Score a test answer sheet that it receives from a test administrator;

16 ~~(5)~~ (8) If a computer-based test is used, provide the test administrator with software that  
17 will:

18 (i) Immediately generate a score report for each test taker;

19 (ii) Allow the test administrator to send to the test publisher or the State a ~~secure write-~~  
20 ~~protected diskette copy record~~ of the test taker's performance on each test item and the  
21 test taker's test scores using a data transfer method that is encrypted and secure; and

22 (iii) Prohibit any changes in test taker responses or test scores.

23 ~~(6)~~ (9) Promptly send to the student and the institution the student indicated he or she is  
24 attending or scheduled to attend a notice stating the student's score for the test and  
25 whether or not the student passed the test;

26 ~~(7)~~ (10) ~~Keep for a period of three years~~ each test answer sheet or electronic record  
27 forwarded for scoring and all other documents forwarded by the test administrator with  
28 regard to the test for a period of three years from the date the analysis of the tests results,  
29 described in paragraph (b)(11) of this section, was sent to the Secretary;

30 ~~(11)~~ (8) ~~Three years after the date the Secretary approves the test and for each subsequent~~  
31 ~~three year period, a~~ Analyze the test scores of students who take the test to determine

1 whether the test scores and data produce any irregular pattern that raises an inference that  
2 the tests were not being properly administered, and provide the Secretary with a copy of  
3 this analysis within 15 months after the test was approved and annually thereafter during  
4 the period of test approval; and

5 ~~(9)~~ (12) Upon request, give the Secretary, a ~~guaranty agency~~ State agency, ~~or~~ an  
6 accrediting agency, and law enforcement agencies access to test records or other  
7 documents related to an audit, investigation, or program review of ~~the~~ an institution, the  
8 test publisher, or a test administrator;

9 (13) Immediately report to the Secretary if the test publisher or the State finds any  
10 credible information indicating that a test has been compromised; and

11 (14) Immediately report to the Office of Inspector General of the Department of  
12 Education for investigation if the test publisher or the State finds any credible  
13 information indicating that a test administrator may have engaged in fraud or other  
14 criminal misconduct.

15 (c)(1) The Secretary may terminate an agreement with a test publisher or a State if the  
16 test publisher or the State fails to carry out the terms of the agreement described in  
17 paragraph (b) of this section.

18 (2) Before terminating the agreement, the Secretary gives the test publisher or the State  
19 the opportunity to show that it has not failed to carry out the terms of its agreement.

20 (3) If the Secretary terminates an agreement with a test publisher or a State under this  
21 section, the Secretary notifies institutions through publication in the Federal Register  
22 when they may no longer use the publisher's or the State's test(s) for purposes of  
23 determining a student's eligibility for Title IV, HEA program funds.

24 (Approved by the Office of Management and Budget under control number 1840-0627)

25 (Authority: 20 U.S.C. 1091(d))

26 **§ 668.151 Administration of tests.**

27 (a)(1) To establish a student's eligibility for Title IV, HEA program funds under this  
28 subpart, if a student has not passed an approved Sstate test, under §668.143, an institution  
29 must select a certified test administrator to give an approved test.

30 (2) An institution may use the results of an approved test it received from an approved  
31 test publisher or assessment center to determine a student's eligibility to receive Title IV,

1 HEA programs funds if the test was independently administered and properly  
2 administered.

3 (b) The Secretary considers that a test is independently administered if the test is—

4 (1) Given at an assessment center by a test administrator who is an employee of the  
5 center; or

6 (2) Given by an independent test administrator who submits the test for scoring by the  
7 test publisher or the State within two business days of administering the test. —

8 ~~(i) Has no current or prior financial or ownership interest in the institution, its affiliates,~~  
9 ~~or its parent corporation, other than the interest obtained through its agreement to~~  
10 ~~administer the test, and has no controlling interest in any other educational institution;~~

11 ~~(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or~~  
12 ~~its parent corporation, a person in control of another institution, or a member of the~~  
13 ~~family of any of these individuals;~~

14 ~~(iii) Is not a current or former member of the board of directors, a current or former~~  
15 ~~employee of or a consultant to a member of the board of directors, chief executive~~  
16 ~~officer, chief financial officer of the institution or its parent corporation or at any other~~  
17 ~~institution, or a member of the family of any of the above individuals; and~~

18 ~~(iv) Is not a current or former student of the institution.~~

19 (c) The Secretary considers that a test is not independently administered if an  
20 institution—

21 (1) Compromises test security or testing procedures;

22 (2) Pays a test administrator a bonus, commission, or any other incentive based upon the  
23 test scores or pass rates of its students who take the test;

24 (3) Otherwise interferes with the test administrator's independence or test administration.

25 (d) The Secretary considers that a test is properly administered if the test administrator—

26 (1) Is certified by the test publisher or the State to give the publisher's or the State's test;

27 (2) Administers the test in accordance with instructions provided by the test publisher or  
28 the State, and in a manner that ensures the integrity and security of the test;

29 (3) Makes the test available only to a test-taker, and then only during a regularly  
30 scheduled test;

31 (4) Secures the test against disclosure or release;

1 (5) Submits the completed test, or a record of test scores, to the test publisher or the State  
2 within the time period specified in §668.152(b) or paragraph (b)(2) of this section, as  
3 appropriate, and ~~two business days after test administration~~ in accordance with the test  
4 publisher's or the State's instructions; and

5 ~~(6) Upon request, gives the Secretary, guaranty agency, licensing agency, accrediting~~  
6 ~~agency, and law enforcement agencies access to test records or other documents related~~  
7 ~~to an audit, investigation, or program review of the institution, or test publisher.~~

8 (e) ~~Except as provided in §668.152, a certified~~ An independent test administrator may not  
9 score a test.

10 (f) A student who fails to pass a test approved under this subpart may not retake the same  
11 form of the test for the period prescribed by the test's publisher or the State.

12 (g) An institution shall maintain a record for each student who took a test under this  
13 subpart of—

14 (1) The test taken by the student;

15 (2) The date of the test; ~~and~~

16 (3) The student's scores as reported by the test publisher, an assessment center, or the  
17 State; and

18 (4) The name and address of the test administrator who administered the test and any  
19 identifier assigned to the test administrator by the test publisher or the State.

20 (Approved by the Office of Management and Budget under control number 1840–0627)

21 (Authority: U.S.C. 1091(d))

22 **§ 668.152 Administration of tests by assessment centers.**

23 (a)~~(1)~~ If a test is given by an assessment center, the assessment center shall properly  
24 administer the test as described in §668.151(d).

25 ~~(2) [Reserved]~~

26 (b)(1) Unless an agreement between a test publisher or a State and an assessment center  
27 indicates otherwise, an assessment center scores the tests it gives and promptly notifies  
28 the institution and the student of the student's score on the test and whether the student  
29 passed the test.

30 (2) If the assessment center scores the test, it must provide ~~annually~~ weekly to the test  
31 publisher—

1 (i) All copies of completed tests, including the name and address of the test administrator  
2 who administered the tests and any identifier assigned to the test administrator by the test  
3 publisher or the State; or

4 (ii) A report listing all test-takers' scores and institutions to which the scores were sent  
5 and the name and address of the test administrator who administered the tests and any  
6 identifier assigned to the test administrator by the test publisher or the State.

7 (Approved by the Office of Management and Budget under control number 1840–0627)

8 (Authority: U.S.C. 1091(d))

9 **§ 668.153 Administration of tests for students whose native language is not English**  
10 **or for persons with disabilities.**

11 Except as provided in §668.143—

12 (a) *Students whose native language is not English.* For a student whose native language is  
13 not English and who is not fluent in English, the institution shall use the following tests,  
14 as applicable:

15 (1) If the student is enrolled or plans to enroll in a program conducted entirely in his or  
16 her native language, the student must take a test approved under §§668.146 and  
17 668.148(a)(2), or 668.149(b).

18 (2) If the student is enrolled or plans to enroll in a program that is taught in English with  
19 an ESL component, and the student is enrolled or plans to enroll in that program and the  
20 ESL component, the student must take ~~either~~ an ESL test approved under §668.148(b), ~~or~~  
21 and a test in the student's native language approved under §§668.146, 668.148 or  
22 668.149, if one is available.

23 (3) If the student is enrolled or plans to enroll in a program that is taught in English  
24 without an ESL component, or the student does not enroll in ~~the any~~ ESL component ~~if~~  
25 ~~the institution offers such a component offered~~, the student must take a test in English  
26 approved under §668.146.

27 (4) If the student enrolls in an ESL program, the student must take an ESL test approved  
28 under §668.148(b); and

29 (b) *Persons with disabilities.* (1) An institution shall use a test described in  
30 §668.148(a)(3) or 668.149(a) for a student with a documented impairment who has

1 neither a high school diploma nor its equivalent and who is applying for Title IV, HEA  
2 program funds.

3 (2) The test must reflect the student's skills and general learned abilities rather than reflect  
4 the student's impairment.

5 (3) The institution shall document that a student is disabled and unable to be evaluated by  
6 the use of a conventional test from the list of tests approved by the Secretary.

7 (4) Documentation of a student's impairment may be satisfied by—

8 (i) A written determination, including a diagnosis and recommended testing  
9 accommodations, by a licensed psychologist or medical physician; or

10 (ii) A record of such a determination by an elementary or secondary school or a  
11 vocational rehabilitation agency, including a diagnosis and recommended testing  
12 accommodations.

13 (Approved by the Office of Management and Budget under control number 1840–0627)

14 (Authority: U.S.C. 1091(d))

15 **§ 668.154 Institutional accountability.**

16 An institution shall be liable for the Title IV, HEA program funds disbursed to a student  
17 whose eligibility is determined under this subpart only if ~~the institution—~~

18 (a) The institution used a test that was not administered independently, in accordance  
19 with §668.151(b) ~~Used a test administrator who was not independent of the institution at~~  
20 ~~the time the test was given;~~

21 (b) The institution or an employee of the institution ~~Compromises~~ compromised the  
22 testing process in any way; or

23 (c) The institution is ~~is~~ unable to document that the student received a passing score on an  
24 approved test.

25 (Authority: U.S.C. 1091(d))

26 **§ 668.155 [Reserved] Transitional rule for the 1996–97 award year.**

27 ~~(a) Notwithstanding any other provision of this part, an institution may continue to base~~  
28 ~~an eligibility determination under section 484(d) of the HEA for a student on a test that~~  
29 ~~was an approved test as of June 30, 1996, and the passing score on that test, until 60 days~~  
30 ~~after the Secretary publishes in the Federal Register the name of an approved test and the~~  
31 ~~passing score on that test that is appropriate for that student.~~

~~(b) If an institution properly based a student's eligibility determination for purposes of section 484(d) of the HEA on a test and passing score that was in effect on June 30, 1996, the institution does not have to redetermine the student's eligibility based upon a test and passing score that was approved under §§668.143 through 668.149.~~

~~(Authority: U.S.C. 1091(d))~~

**§ 668.156 Approved State process.**

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for Title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services—

(1) Orientation regarding the institution's academic standards and requirements, and student rights;

(2) Assessment of each student's existing capabilities through means other than a single standardized test;

(3) Tutoring in basic verbal and quantitative skills, if appropriate;

(4) Assistance in developing educational goals;

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities; and

- 1 (6) Follow-up by teachers and counselors regarding the student's classroom performance  
2 and satisfactory progress toward program completion.
- 3 (d) A State process must—
- 4 (1) Monitor on an annual basis each participating institution's compliance with the  
5 requirements and standards contained in the State's process;
- 6 (2) Require corrective action if an institution is found to be in noncompliance with the  
7 State process requirements; and
- 8 (3) Terminate an institution from the State process if the institution refuses or fails to  
9 comply with the State process requirements.
- 10 (e)(1) The Secretary responds to a State's request for approval of its State's process within  
11 six months after the Secretary's receipt of that request. If the Secretary does not respond  
12 by the end of six months, the State's process ~~becomes effective~~ is deemed to be approved.
- 13 (2) An approved State process becomes effective for purposes of determining student  
14 eligibility for Title IV, HEA program funds under this subpart—
- 15 (i) on the date the Secretary approves the process; or  
16 (ii) six months after the date on which the State submits the process to the Secretary for  
17 approval, if the Secretary ~~neither~~ approves, ~~nor does not~~ disapproves; the process during  
18 that six month period.
- 19 (f) The Secretary approves a State process for a period not to exceed five years.
- 20 (g)(1) The Secretary withdraws approval of a State process if the Secretary determines  
21 that the State process violated any terms of this section or that the information that the  
22 State submitted as a basis for approval of the State process was inaccurate.
- 23 (2) The Secretary provides a State with the opportunity to contest a finding that the State  
24 process violated any terms of this section or that the information that the State submitted  
25 as a basis for approval of the State process was inaccurate.
- 26 (h) The State shall calculate the success rates as referenced in paragraph (b) of this  
27 section by—
- 28 (1) Determining the number of students with high school diplomas who, during the  
29 applicable award year described in paragraph (i) of this section, enrolled in participating  
30 institutions and—
- 31 (i) Successfully completed education or training programs;

- 1 (ii) Remained enrolled in education or training programs at the end of that award year; or  
2 (iii) Successfully transferred to and remained enrolled in another institution at the end of  
3 that award year;
- 4 (2) Determining the number of students with high school diplomas who enrolled in  
5 education or training programs in participating institutions during that award year;
- 6 (3) Determining the number of students calculated in paragraph (h)(2) of this section who  
7 remained enrolled after subtracting the number of students who subsequently withdrew or  
8 were expelled from participating institutions and received a 100 percent refund of their  
9 tuition under the institutions' refund policies;
- 10 (4) Dividing the number of students determined in paragraph (h)(1) of this section by the  
11 number of students determined in paragraph (h)(3) of this section;
- 12 (5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section  
13 for students without a high school diploma or its recognized equivalent who enrolled in  
14 participating institutions.
- 15 (i) For purposes of paragraph (h) of this section, the applicable award year is the latest  
16 complete award year for which information is available that immediately precedes the  
17 date on which the State requests the Secretary to approve its State process, except that the  
18 award year selected must be one of the latest two completed award years preceding that  
19 application date.
- 20 (Approved by the Office of Management and Budget under control number 1840-0627)  
21 (Authority: 20 U.S.C. 1091(d))

## Issue Paper #3

### Team I – Program Integrity Issues

**Issue:** Misrepresentation of Information to Students and Prospective Students

**Statutory cites:** HEA section 487

**Regulatory cites:** 34 CFR 668.71-75

**Summary question(s):** Should the Department revise the regulations or provide additional guidance about the types of statements and communication that could constitute “misrepresentation”?

**Summary of issue:** Choosing a college or job training program is increasingly a high-stakes decision for consumers. The choice can be costly both in terms of the prospective student’s time as well as the tuition, fees and other expenses incurred. Furthermore, the student may be taking on debt that will be more burdensome if the education or training does not meet the student’s expectations or fails to lead to hoped-for employment.

ED regulations currently prohibit any “substantial misrepresentation made by [an] institution regarding the nature of its educational program, its financial charges or the employability of its graduates.” Additional detail in the rule provides further guidance to institutions.

The Federal Trade Commission (FTC) publishes guidelines for consumers to use to avoid deceptive advertising and promotional, marketing, and sales practices by vocational training providers, at 16 CFR 254. The FTC Guides, which include references to other guidelines, such as those regarding the use of endorsements and testimonials, are considered administrative interpretations of the statutes that the FTC is charged with implementing. Conduct that is inconsistent with the Guides may result in corrective action by the FTC if a school is found to be in violation of the law. For example, the provisions caution industry members against engaging in any activities such as using any name, label, logo, etc. that would mislead a student as to the nature of the school, its accreditation, programs, or methods of teaching. The FTC updates its Guides periodically.

The Federal Register notice requesting public comments on the Federal Trade Commission Guides is located at 16 CFR Part 245:

<http://www.ftc.gov/os/fedreg/2009/july/090730privatevocationalschool.pdf>

While the Guides are helpful, the FTC has jurisdiction over only for-profit entities and it does not extend to degree-granting institutions.

**Comments and questions:** The Department anticipates that the FTC Guides will be included as part of the discussion as it develops a regulatory approach to address misrepresentation of consumer information.

Current regulations describe the parties to whom false, erroneous or misleading statements may not be made. The parties include prospective and enrolled students or their families, or the Secretary. Should the parties be expanded, to possibly include state agencies or accreditors?

To what extent should the Department's regulations on misrepresentation be harmonized with the FTC's guidelines?

Are there other clarifications that should be considered?

1 **Draft Regulatory Language:**

2

3 **§ 668.71 Scope and special definitions.**

4 (a) This subpart establishes establishes the types of activities that constitute  
5 misrepresentation by any certificate or degree-granting institutions and by participating  
6 eligible institutions that have contracts or agreements with non-eligible institutions. ~~the~~  
7 standards and rules by which the Secretary may initiate a proceeding under subpart G  
8 against an otherwise eligible institution for any substantial. Engaging in these activities  
9 including in the misrepresentation ~~made by that the~~ institution ~~regarding of~~ the nature of  
10 its educational program, its financial charges, or the employability of its graduates, as  
11 well as misrepresentation in any advertising, promotional materials, or in the marketing  
12 or sale of courses or programs of instruction offered by the institution, may result in  
13 restrictions or denials of participation applications or a proceeding under subpart G .

14 (b) The following definitions apply to this subpart:

15 *Misrepresentation:* Any false, erroneous or misleading statement an eligible institution  
16 makes to a student enrolled at the institution, to any prospective student, to the family of  
17 an enrolled or prospective student, an accrediting agency, a State agency, or to the  
18 Secretary. Misrepresentation includes the dissemination of endorsements and testimonials  
19 that are given under duress.

1 *Prospective student:* Any individual who has contacted an eligible institution for the  
2 purpose of requesting information about enrolling at the institution or who has been  
3 contacted directly by the institution or indirectly through ~~general~~ advertising about  
4 enrolling at the institution.

5 *Substantial misrepresentation:* Any misrepresentation on which the person to whom it  
6 was made could reasonably be expected to rely, or has reasonably relied, to that person's  
7 detriment.

8 (Authority: 20 U.S.C. 1094)

9 ***§ 668.72 Nature of educational program.***

10 Misrepresentation by an institution of the nature of its educational program includes, but  
11 is not limited to, false, erroneous or misleading statements concerning—

12 (a)(1) The particular type(s), specific source(s), nature and extent of its accreditation;  
13 and

14 (2) Failure to make clear, for any course or program of instruction, that it is not  
15 accredited by an accrediting agency recognized by the U.S. Department of Education in  
16 any advertising or promotional materials pertaining to these courses;

17 (b)(1) Whether a student may transfer course credits earned at the institution to any other  
18 institution; and

19 (2) Whether the institution will accept transfer credits earned at another institution;

20 (c) Whether successful completion of a course of instruction qualifies a student - for—

21 (1) For acceptance to a labor union or similar organization; or

22 (2) To receive receipt of a local, State, or Federal license, or a non-governmental  
23 certification required as a precondition for employment or to perform certain functions;

1 | (d) The requirements for successfully completing the course or program and the  
2 | circumstances that would constitute grounds for terminating the student's enrollment;

3 | (~~e~~) Whether its courses are recommended or have been the subject of unsolicited  
4 | testimonials or endorsements by —

5 | (1) vocational counselors, high schools, ~~or~~ colleges, educational organizations,  
6 | employment agencies, members of a particular industry, or former students; or

7 | (2) Governmental officials for governmental employment;

8 | (~~f~~) Its size, location, facilities or equipment;

9 | (~~g~~) The availability, frequency and appropriateness of its courses and programs to the  
10 | employment objectives that it states its programs are designed to meet;

11 | (~~g~~) The nature, age and availability of its training devices or equipment and their  
12 | appropriateness to the employment objectives that it states its programs and courses are  
13 | designed to meet;

14 | (~~h~~) The number, availability and qualifications, including the training and experience, of  
15 | its faculty and other personnel;

16 | (~~i~~) The availability of part-time employment or other forms of financial assistance;

17 | (~~j~~) The nature and availability of any tutorial or specialized instruction, guidance and  
18 | counseling, or other supplementary assistance it will provide its students before, during or  
19 | after the completion of a course;

20 | (~~k~~) The nature of extent of any prerequisites established for enrollment in any course;

21 | (m) The subject matter, substance, or content of the course of study or any other material  
22 | fact related to the degree, diploma, certificate of completion, or any similar document that  
23 | the student was awarded;

1 (n) Whether the academic, professional, or occupational degree that the institution will  
2 confer has been authorized by the appropriate State educational agency, including failing  
3 to disclose, in the case that a degree has not been authorized, that fact in any advertising  
4 or promotion materials that contain a reference to such degree; or

5 ~~(o)~~ Any matters required to be disclosed to prospective students under §§668.44 and  
6 668.47 of this part.

7 (Authority: 20 U.S.C. 1094)

8 [51 FR 43324, Dec. 1, 1986, as amended at 54 FR 24118, June 5, 1989; 59 FR 22320,  
9 Apr. 29, 1994]

10 ***§ 668.73 Nature of financial charges.***

11 Misrepresentation by an institution of the nature of its financial charges includes, but is  
12 not limited to, false, erroneous or misleading statements concerning—

13 (a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is  
14 actually used to reduce tuition charges made known to the student in advance. The  
15 charges made known to the student in advance are the charges applied to all students not  
16 receiving a scholarship; ~~or~~

17 (b) Whether a particular charge is the customary charge at the institution for a course;~~;~~

18 (c) The total cost of the program and the school's refund policy if the student does not  
19 complete the program; or

20 (d) The availability or nature of any financial assistance offered to students, including a  
21 student's responsibility to repay any loans, regardless of whether or not the student is  
22 successful in completing the program and obtaining employment.

23  
24 (Authority: 20 U.S.C. 1094)

1    **§ 668.74   Employability of graduates.**

2    Misrepresentation by an institution regarding the employability of its graduates includes,  
3    but is not limited to, false, erroneous or misleading statements—

4    (a) That the institution is connected with any organization or is an employment agency or  
5    other agency providing authorized training leading directly to employment.

6    (b) That the institution maintains a placement service for graduates or will otherwise  
7    secure or assist its graduates to obtain employment, unless it provides the student with a  
8    clear and accurate description of the extent and nature of this service or assistance; ~~or~~

9    (c) That do not accurately reflect the current conditions or employment opportunities in  
10   the industry or occupation for which students are being trained;

11   (d) That suggest, directly or by implication, that employment is being offered or that a  
12   talent hunt or contest is being conducted, including through the use of phrases such as  
13   “Men/women wanted to train for \* \* \*,” “Help Wanted,” “Employment,” “Business  
14   Opportunities,” or words or terms of similar import; or

15    ~~(e)~~ Concerning government job market statistics in relation to the potential placement of  
16    its graduates.

17    (Authority: 20 U.S.C. 1094)

18

19    § 668.75 Relationship with the Department of Education

20    (a) An institution may not describe its participation in the title IV, HEA programs in a  
21    manner that suggests approval or endorsement by the U.S. Department of Education of  
22    the quality of the institution’s educational programs.

23    ~~§ 668.75—Procedures.~~

1 ~~(a) On receipt of a written allegation or complaint from a student enrolled at the~~  
2 ~~institution, a prospective student, the family of a student or prospective student, or a~~  
3 ~~governmental official, the designated department official as defined in §688.81 reviews~~  
4 ~~the allegation or complaint to determine its factual base and seriousness.~~

5 ~~(b) If the misrepresentation is minor and can be readily corrected, the designated~~  
6 ~~department official informs the institution and endeavors to obtain an informal, voluntary~~  
7 ~~correction.~~

8 ~~(c) If the designated department official finds that the complaint or allegation is a~~  
9 ~~substantial misrepresentation as to the nature of the educational programs, the financial~~  
10 ~~charges of the institution or the employability of its graduates, the official—~~

11 ~~(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to~~  
12 ~~participate in the Title IV, HEA programs according to the procedures set forth in subpart~~  
13 ~~G, or~~

14 ~~(2) Take other appropriate action.~~  
15

## Issue Paper #4

### Team I – Program Integrity Issues

<b>Issue:</b>	Incentive Compensation
<b>Statutory cites:</b>	HEA section 487(a)(20)
<b>Regulatory cites:</b>	34 CFR 668.14(b)(22)
<b>Summary question(s):</b>	Should the “safe harbors” be reexamined?

**Summary of issue:** The HEA provides that to be eligible to participate in the Federal student financial aid programs authorized under title IV, an institution must enter into a program participation agreement with the Secretary. The agreement includes a number of conditions with which an institution must comply to be granted initial and continuing eligibility to participate. Among those conditions is a prohibition on institutions providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance. This limitation shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

The regulations implementing this provision of the HEA specify 12 types of payment and compensation plans that do not violate this statutory prohibition. The first safe harbor explains the conditions under which an institution may adjust compensation without that compensation being considered an incentive payment.

The remaining 11 safe harbors describe the conditions under which payments that could potentially be construed as based upon securing enrollments or financial aid are nonetheless not covered by the statutory prohibition.

The payment or compensation plans covered by the safe harbors cover the following subjects:

1. Adjustments to employee compensation. Under this safe harbor, an institution may make up to two adjustments (upward or downward) to a covered employee’s annual salary or fixed hourly wage rate within any 12-month period without the adjustment being considered an incentive payment, provided that no adjustment is based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. One cost-of-living increase that is paid to all or substantially all of the institution’s full-time employees will not be considered an adjustment under this safe harbor. In addition, with regard to overtime, if the basic compensation of an employee is not an incentive payment, neither is overtime pay required under the Federal Fair Labor Standards Act.
2. Enrollment in programs that are not eligible for title IV, HEA program funds. An institution may provide incentive compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for title IV, HEA program funds.

3. Contracts with employers to provide training. This safe harbor addresses payments to recruiters who arrange contracts between an institution and an employer, where the employer pays the tuition and fees for its employees (either directly to the institution or by reimbursement to the employee). As long as there is no direct contact by the institution's representative with prospective students, and as long as the employer is paying at least 50% of the training costs, incentive payments to recruiters who arrange for such contracts are not covered by the incentive payment prohibition, provided that the incentive payments are not based on the number of employees who enroll, or the amount of revenue generated by those employees.
4. Profit-sharing bonus plans. Profit-sharing and bonus payments to all or substantially all of an institution's full-time employees are not incentive payments based on success in securing enrollments or awarding financial aid. As long as the profit-sharing or bonus payments are substantially the same amount or the same percentage of salary or wages, and as long as the payments are made to all or substantially all of the institution's full-time professional and administrative staff, compensation paid as part of a profit-sharing or bonus plan is not considered a violation of the incentive payment prohibition. In addition, such payments can be limited to all or substantially all of the full-time employees at one or more organizational levels at the institution, except that an organizational level may not consist predominantly of recruiters, the admissions staff, or the financial aid staff.
5. Compensation based upon program completion. Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter, does not violate the incentive compensation prohibition. Successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution. (Time may not be substituted for credits earned.) In addition, the 30 weeks of instructional time element of the definition of an academic year does not apply to this safe harbor. Therefore, this safe harbor applies when a student earns, for example, 24 semester credits, no matter how short or long a time that takes.
6. Pre-enrollment activities. Generally, clerical pre-enrollment activities are not considered recruitment or admission activities. Accordingly, an institution may make incentive payments to individuals whose responsibilities are limited to pre-enrollment activities that are clerical in nature. However, soliciting students for interviews is a recruitment activity, not a pre-enrollment activity, and individuals may not receive incentive compensation based on their success in soliciting students for interviews. In addition, since a recruiter's job description is to recruit, it would be very difficult for an institution to document that it was paying a bonus to a recruiter solely for clerical pre-enrollment activities.
7. Managerial and supervisory employees. This safe harbor recognizes that the incentive payment prohibition applies only to individuals who perform activities related to recruitment, admissions, enrollment, or the financial aid awarding process and their immediate supervisors. Direct supervisors are included in this prohibition because their actions generally have a direct and immediate impact on the individuals who carry out these covered activities.

8. Token gifts. Under this safe harbor, the regulations provide that a token gift not to exceed \$100 may be provided to an alumnus or student provided that the gift is not in the form of money and no more than one gift is provided annually to an individual. The cost basis of a token noncash gift is what the institution paid for it. The value is the fair market value of the item. The fair market value of an item might be considerably greater than its cost. A high value item for which the institution paid a minimal cost would not be considered a token gift.
9. Profit distributions. Profit distributions to owners are not payments based on success in securing enrollments or awarding financial aid. Therefore any owner, whether an employee or not, is entitled to a share of the organization's profits to the extent they represent a proportionate share of the profits based upon the employee's ownership interest.
10. Internet-based activities. This safe harbor permits an institution to award incentive compensation for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission online.
11. Payments to third parties for non-recruitment activities. This safe harbor recognizes that the incentive payment prohibition applies only to activities dealing with recruiting, admissions, enrollment, and financial aid. Therefore, an institution may make incentive payments to third parties for other types of services, including tuition sharing arrangements, marketing, and advertising that are not covered by the incentive compensation prohibition.
12. Payments to third parties for recruitment activities. If an institution uses an outside entity to perform activities for it, including covered activities, the institution may make incentive payments to the third party without violating the incentive payment prohibition as long as the individuals performing the covered activities are not compensated in a way that is prohibited by the incentive payment compensation rule. For example, if an institution established a group of employees who provided the institution with a series of services, and one of those services was recruiting, the incentive compensation prohibition would preclude only the individuals doing the recruiting from being paid on an incentive basis. If that institution hired a contractor to provide these services, the same rules would apply. The outside entity could not pay the individuals performing the recruiting services on an incentive basis, but it could pay the other employees performing non-recruiting activities on an incentive basis.

### **Comments and questions**

The Department has received complaints from students and enrollment advisors about the high-pressure sales tactics of some postsecondary institutions. Some argue that tying staff compensation to the number of students enrolled is an inherent conflict of interest and that the safe harbors undermine the statutory ban on incentive compensation. The Department has also heard from a number of educational institutions that the lack of clear guidance prior to establishment of the safe harbors made it very difficult for institutions to be confident of their compliance with the rule.

Should the safe harbors be maintained, amended, or eliminated in whole or in part from the regulations?

**Updated information since November meeting:**

1. Consistent with the majority of the comments made by the participants, the Department believes that the specific language of the statute is clear, and that the elimination of all of the regulatory “safe harbors” would best serve to effectuate congressional intent. The following specific comments are offered regarding each of the currently existing 12 “safe harbors.” (Hereinafter, each “safe harbor” is designated by the letter that corresponds to the regulatory citation, 34 C.F.R. § 668.14(b)(22)(ii)).
2. Pursuant to “safe harbor” (A), institutions are permitted to award thrice-annual salary adjustments (one based on the cost of living), as long as these adjustments are not based *solely* on the number of students recruited. This “safe harbor” has led to allegations in which an institution concedes that its compensation structure includes consideration of the number of enrolled students, but avers that it is not *solely* based upon such numbers. In some of these instances, the substantial weight of the evidence has suggested that the other factors purportedly analyzed are not truly considered, and that, in reality, the institution bases salaries exclusively upon the number of students enrolled. In addition, changing the word *solely* to some other modifier would not ameliorate this concern as the evaluation of any alternative arrangement would likely then merely shift to whether the compensation was “primarily” or “substantially” based upon enrollments.
3. “Safe harbor” (B) permits compensation to recruiters based upon enrollment of students who enroll in programs that are ineligible for Title IV funds. The statute provides that compensation may not be based upon success in securing enrollments whether the students receive Title IV funds, or some other form of student financial assistance. The statute provides for only one exception, and that addresses foreign students residing in foreign countries.
4. “Safe harbor” (C) exempts compensation to recruiters based upon the arrangement of contracts with employers under certain circumstances that result in the enrollment of the employer’s employees in the institution. The compensation provided, however, is ultimately based upon success in securing enrollments, and is thus inconsistent with the statutory language.
5. “Safe harbor” (D) addresses compensation paid as part of a profit-sharing or bonus plan under certain conditions. There is no statutory proscription upon offering employees either profit-sharing or a bonus; however, if either is based upon success in securing enrollments, it is not permitted.
6. “Safe harbor” (E) permits compensation based upon students successfully completing their educational program. Such compensation is “indirectly” based upon securing enrollments-- unless the student enrolls, the student cannot successfully complete an educational program, and with the proliferation of short-time, accelerated programs, the potential exists for shorter and shorter programs, and increased efforts to rely upon this ‘safe harbor’ to incentivize recruiters. This safe harbor may lead to lowered or

misrepresented admissions standards and program offerings, lowered academic progress standards, altered attendance records, and a lack of meaningful emphasis on retention.

7. “Safe harbor” (F) states that compensation based upon clerical “pre-enrollment” activities is permitted under the statute. Such activities certainly contribute “indirectly” if not “directly” to the success in securing enrollments, and hence compensation based upon them is prohibited by the statute. Moreover, with the elimination of “safe harbor” (A), an unscrupulous actor could claim that the activities in which its recruiters’ engaged, and for which they were compensated, consisted of “clerical” or “pre-enrollment” activities, regardless of whether a student ultimately enrolled.
8. “Safe harbor” (G) permits compensation to managers and supervisors based upon success in securing enrollments as long as the person receiving the compensation does not directly manage or supervise employees directly involved in recruitment activities. Senior management may drive the organizational and operational culture at an institution, creating pressures for top, and even middle, management to secure increasing numbers of enrollments from their recruiters. As a result, these individuals are not exempt from the ban on receiving incentivized compensation.
9. “Safe harbor” (H) permits the payment of one-time annual non-monetary gifts that do not exceed \$100 to students or alumni. As at least one participant noted, students oft-times do things with little reflection if it brings an immediate reward, and such things as a \$100 gift card constitute a substantial incentive for many students.
10. “Safe harbor” (I) states that profit distributions proportionately based upon an individual’s ownership interest are permitted. The statute prohibits compensation based upon success in securing enrollments, not based upon an individual’s ownership interest. Profit distributions based directly or indirectly upon success in securing enrollments is all that is proscribed.
11. “Safe harbor” (J) permits compensation paid for Internet-based recruitment and admission activities. This form of recruitment is not exempt from the statutory ban on incentive compensation. Technological advancements and developments in Internet-based activities since this “safe harbor” was adopted, and the frequency with which such activities are now relied upon, creates further cause for concern.
12. “Safe harbors” (K) and (L) address payments made to third parties-- (K), where the third party provides no recruiting or admission activities, or the awarding of Title IV funds, and (L), where the third party does provide recruiting or admission activities, or the awarding of Title IV funds, as long as none of the individuals providing these activities is paid in a fashion that violates the law. It should not matter what the third party is doing-- it cannot be compensated directly or indirectly based upon the success in securing enrollments. Thus, there is no reason to provide any discussion of third-party activities as a potential “safe harbor.”

1 **Draft Regulatory Language**

2  
3 § 668.14(b)(22)(~~ii~~) It will not provide any commission, bonus, or other incentive payment based  
4 directly or indirectly upon success in securing enrollments or financial aid to any person or entity  
5 engaged in any student recruiting or admission activities or in making decisions regarding the  
6 awarding of ~~student financial assistance, title IV, HEA program funds~~, except that this  
7 ~~limitation regulation shall~~ does not apply to the recruitment of foreign students residing in foreign  
8 countries who are not eligible to receive ~~Federal student assistance, title IV, HEA program funds~~.

9 ~~(ii) Activities and arrangements that an institution may carry out without violating the provisions~~  
10 ~~of paragraph (b)(22)(i) of this section include, but are not limited to:~~

11 ~~(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as~~  
12 ~~long as that compensation is not adjusted up or down more than twice during any twelve month~~  
13 ~~period, and any adjustment is not based solely on the number of students recruited, admitted,~~  
14 ~~enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting~~  
15 ~~from a cost of living increase that is paid to all or substantially all full-time employees is not~~  
16 ~~considered an adjustment.~~

17 ~~(B) Compensation to recruiters based upon their recruitment of students who enroll only in~~  
18 ~~programs that are not eligible for title IV, HEA program funds.~~

19 ~~(C) Compensation to recruiters who arrange contracts between the institution and an employer~~  
20 ~~under which the employer's employees enroll in the institution, and the employer pays, directly~~  
21 ~~or by reimbursement, 50 percent or more of the tuition and fees charged to its employees;~~  
22 ~~provided that the compensation is not based upon the number of employees who enroll in the~~  
23 ~~institution, or the revenue they generate, and the recruiters have no contact with the employees.~~

24 ~~(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are~~  
25 ~~substantially the same amount or the same percentage of salary or wages, and made to all or~~  
26 ~~substantially all of the institution's full-time professional and administrative staff. Such payments~~  
27 ~~can be limited to all, or substantially all of the full-time employees at one or more organizational~~  
28 ~~level at the institution, except that an organizational level may not consist predominantly of~~  
29 ~~recruiters, admissions staff, or financial aid staff.~~

30 ~~(E) Compensation that is based upon students successfully completing their educational~~  
31 ~~programs, or one academic year of their educational programs, whichever is shorter. For this~~

1 ~~purpose, successful completion of an academic year means that the student has earned at least 24~~  
2 ~~semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at~~  
3 ~~least 900 clock hours of instruction at the institution.~~

4 ~~(F) Compensation paid to employees who perform clerical “pre-enrollment” activities, such as~~  
5 ~~answering telephone calls, referring inquiries, or distributing institutional materials.~~

6 ~~(G) Compensation to managerial or supervisory employees who do not directly manage or~~  
7 ~~supervise employees who are directly involved in recruiting or admissions activities, or the~~  
8 ~~awarding of title IV, HEA program funds.~~

9 ~~(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are~~  
10 ~~not in the form of money, no more than one gift is provided annually to an individual, and the~~  
11 ~~cost of the gift is not more than \$100.~~

12 ~~(I) Profit distributions proportionately based upon an individual's ownership interest in the~~  
13 ~~institution.~~

14 ~~(J) Compensation paid for Internet-based recruitment and admission activities that provide~~  
15 ~~information about the institution to prospective students, refer prospective students to the~~  
16 ~~institution, or permit prospective students to apply for admission on-line.~~

17 ~~(K) Payments to third parties, including tuition sharing arrangements, that deliver various~~  
18 ~~services to the institution, provided that none of the services involve recruiting or admission~~  
19 ~~activities, or the awarding of title IV, HEA program funds.~~

20 ~~(L) Payments to third parties, including tuition sharing arrangements, that deliver various~~  
21 ~~services to the institution, even if one of the services involves recruiting or admission activities~~  
22 ~~or the awarding of title IV, HEA program funds, provided that the individuals performing the~~  
23 ~~recruitment or admission activities, or the awarding of title IV, HEA program funds, are not~~  
24 ~~compensated in a manner that would be impermissible under paragraph (b)(22) of this section.~~

## Issue Paper #5

### Team I – Program Integrity Issues

**Issue:** State authorization as a component of institutional eligibility

**Statutory cites:** HEA sections 101(a)(2); 102(b)(1)(B); 102(c)(1)(B)

**Regulatory cites:** §600.4(a)(3); §600.5(a)(4); §600.6(a)(3)

**Summary of issue:** To begin and continue to participate in the title IV student aid programs, the HEA requires an institution (with the exception of a foreign institution) to be legally authorized to provide a postsecondary educational program within the State in which it is located.

The State's legal authorization is the legal status granted to an institution through a charter, license, or other written document issued by an appropriate agency or official of the State in which the institution is located. It may be provided by a licensing board or educational agency. In some cases, the institution's charter is its legal authorization. An institution must have evidence that it has the authority to operate in a State at the time the institution applies to be certified or recertified to participate in the title IV programs.

State law governs the licensure or authorization of institutions that operate in the State. States structure their oversight and regulatory agencies in various ways, and may have significantly different requirements that institutions must meet to be legally authorized to provide an educational program. (One indicator of this variation in State requirements is the penchant of substandard institutions and diploma mills to move from State to State in response to changing requirements. These entities set up operation in States that provide very little oversight, and if a State strengthens its licensure law, they simply move to another State and begin operation there.)

Over 35 years ago, the Department determined that institutions were authorized by the State by virtue of the State's decision not to have any oversight over them. This precedent was called into play when a situation emerged more recently in California. California's Bureau for Private Postsecondary and Vocational Education serves as the State's oversight and regulatory agency for private proprietary postsecondary institutions. Disputes led to an impasse over the continued existence of the Bureau. Because the Department informed the State that the institutions in question would remain eligible for Federal aid even if the Bureau was eliminated (based on the earlier precedent), there was no pressure for the State to maintain its role. The establishing legislation for the Bureau, the Private Postsecondary and Vocational Education Reform Act, became inoperative on June 30, 2007 and was repealed on January 1, 2008. Recently, California created a new State bureau with oversight responsibility for private postsecondary institutions. During the period when there was no State agency authorizing private postsecondary institutions, they continued to participate in the Federal student aid programs.

A second issue is that some States are deferring to accrediting agencies for approval of educational institutions or are providing exemptions for a subset of institutions for other reasons. Since accrediting agencies generally require that an institution be legally operating in the State, the checks and balances provided by accreditation and State legal authorization are undermined. For example, institutions in California that are accredited by the Western Association of Schools

and Colleges had a complete exemption from the now-expired California law, and proposed legislation in California for a new licensing regime contains the same exemption.

The Veteran's Administration relies upon State Approving Agencies (SAA) to review, evaluate and approve quality programs of education and training under State and Federal criteria for the veterans' education benefits programs it oversees. The SAAs are funded through the Post-9/11 G.I. Bill. Each State approaches this responsibility in its own way. Some States have one agency to approve all programs in postsecondary educational institutions, another agency to approve all on-the-job training programs, and then possibly a third agency to approve flight schools. In general, the VA requires programs offered by institutions of higher education to be accredited by an accrediting agency recognized by the Secretary of Education.

### Comments and questions

- Should institutions be allowed to participate in the title IV programs if a State does not license or otherwise authorize an institution to offer postsecondary programs in the State?
- What should constitute State authorization? Should there be any minimum standards for State authorization for purposes of determining institutional eligibility to participate in the title IV programs? Is it adequate for title IV purposes for a State agency to rely solely on accreditation as the determinant of State authorization?

1

2 Draft regulatory language

3 §600.9 State authorization.

4 (a) An institution described under §§600.4, 600.5, and 600.6 may be legally authorized

5 by a State through—

6 (1) A charter, license, or other document issued by an appropriate State government

7 agency that affirms or conveys authority to the institution to operate educational programs

8 beyond secondary education and grant degrees within the jurisdiction of the State;

9 (2) An action, and written documentation, by an appropriate State government agency

10 that authorizes, licenses, or otherwise approves the institution to establish and operate within the

11 State nondegree programs that provide education and training beyond secondary education; or

12 (3) A reciprocal agreement, or documented relationship, between or among appropriate

13 agencies of two or more States that recognizes or approves educational programs or services

1 beyond secondary education, including the electronic delivery of instruction (such as distance  
2 education programs), if the main campus of the institution is located in another State.

3 (b) The Secretary considers an institution to be legally authorized by a State under  
4 paragraph (a) of this section if the State monitors--

5 (1) The institution and its educational programs to assure academic quality. The State  
6 may rely on accrediting agencies recognized by the Secretary under 34 CFR part 602;

7 (2) The institution's capacity and continuing financial viability under its current  
8 ownership status and any transfer, or significant change in ownership or legal status; and

9 (3) The institution to assure compliance with applicable State laws with respect to  
10 consumer protection, the maintenance of student records, refunds policies, and other matters  
11 relating to State authority in these areas.

12 Note: Sections 600.4, .5, and .6 would need to be amended to reference this section for State  
13 authorization.;

14

## Issue Paper #6

### Team I – Program Integrity Issues

<b>Issue:</b>	Gainful Employment in a Recognized Occupation
<b>Statutory cites:</b>	HEA sections 101(b)(1); 102(b)(1)(A)(i); 102(c)(1)(A)
<b>Regulatory cites:</b>	§600.2; §600.4(a)(4)(iii); §600.5(a)(5); §600.6(a)(4); §668.8(c)(3); §668.8(c)(3); §668.8(d)(1)(iii); §668.8(d)(2)(iii); §668.8(d)(3)(iii); §668.8(g)(1)(ii); §668.8(g)(2)

**Summary of issue:** Some programs and institutions are eligible for Federal financial aid by virtue of the fact that they “prepare students for gainful employment in a recognized occupation.” The regulations currently define a recognized occupation as an occupation listed in the latest edition of the *Dictionary of Occupational Titles* published by the Department of Labor (DOL). This dictionary has been replaced by DOL’s on-line Occupational Information Network (O\*NET) (<http://online.onetcenter.org/>) that relies on DOL’s Standard Occupational Classification (SOC) system. The Department of Education has not, in the past, worked with the DOL to make the link between institutions’ programs and the occupations recognized by the Secretary of Labor.

Furthermore, there is no standard for what constitutes “gainful employment.”

To better link programs with occupations, one approach could be to require institutions offering occupational training programs to provide the Department and prospective students with the occupation names and SOC codes ([http://www.bls.gov/oes/current/oes\\_stru.htm](http://www.bls.gov/oes/current/oes_stru.htm)). Institutions could link directly to the occupational profile (for example, see the overview of the job tasks and salary for energy auditors) at <http://online.onetcenter.org/link/summary/13-1199.01>.

In considering possible definitions for “gainful employment,” the relationship of student debt levels of recent graduates of an institution or program to expected earnings could be a consideration in determining a program’s eligibility. Alternatively, a reasonable relationship between the tuition costs incurred by students and expected earnings could be considered.

#### Comments and questions

- Should the Department require that institutions cite the occupational names and codes for occupational training programs, and if so, how should the disclosure be made?
- Should “gainful employment” be defined? And if so, what should be the relationship between tuition and fee charges (and/or loan debt) and expected earnings? For programs where this relationship is not reasonable, when and how should the Department no longer consider the program to be an eligible program for title IV purposes?

Draft Regulatory Language

1 | §600.2 Definitions

2 | \* \* \* \*

3 | *Recognized occupation:* An occupation that is—

4 | (1) ~~Listed in an “occupational division” of the latest edition of the *Dictionary of*~~  
5 | ~~*Occupational Titles, published by the U.S. Department of Labor*~~ Identified by a Standard  
6 | Occupational Classification (SOC) code established by the Department of Labor and available at  
7 | <http://online.onetcenter.org>; or

8 | (2) Determined by the Secretary in consultation with the Secretary of Labor to be a  
9 | recognized occupation.

10 | \* \* \*

11 | **Gainful Employment –We are not providing regulatory language at this time.**

12 | ***Option 1: Reasonable relationship between the cost of the program expected earnings:***

13 | The difference in annual earnings between a high school graduate and a person who  
14 | completes a vocational program would represent the “value added by the program.” We would  
15 | consider the cost/earnings relationship to be reasonable if the cost of the program is less than 3  
16 | times (or some other multiple) the value added. If the cost/earnings relationship is not  
17 | reasonable, we would no longer consider the program to be eligible for title IV aid.

18 | *Determining the value added.* We would use BLS wage data for high school graduates  
19 | and for persons completing a vocational program. For 2008, the annual earnings for high school  
20 | graduates in the first decile are \$17,420. Similarly, we would use BLS wage data for the  
21 | job/occupation related to the vocational program. The difference between the wage amounts is  
22 | the value added.

1 For a person completing a Dental Assisting program, the value added would be the first  
2 decile earnings of \$22,270 less first decile high school earnings of \$17,420, or \$4,850. In this  
3 case, the cost/earnings relationship is reasonable if the program costs less than \$14,550.

#### 4 ***Issues***

5 In some cases there are several jobs a person could get that relate to the program that  
6 person completed (schools identify their program by CIP code, and the O\*NET site identifies by  
7 SOC code all the jobs and occupations related to the CIP code). The wage data from those jobs  
8 differs, and in some cases the difference is substantial. Which “job” should we consider in  
9 determining the cost/earnings relationship?

10 In some cases the value added is *negative*. For example, the first decile earnings for a job  
11 are \$12,690 compared to first decile high school graduate earnings of \$17,420 (a negative  
12 difference of \$4,730). What should we do in these cases?

#### 13 ***Option 2: Debt/Income ratio***

14 Another approach would be to look at whether a student’s starting annual income is  
15 adequate to repay the average debt service obligation for someone completing a specific  
16 program, while still having an adequate amount available to meet living expenses. For example,  
17 in a particular field the average debt for a student completing a certificate program is \$9000.  
18 That student would have annual loan repayments totaling \$1250. For a debt-to-income ratio of 5  
19 percent, a minimum qualifying income of at least \$25,000 would be required to satisfy a “gainful  
20 employment” standard. For the qualifying income, we could use BLS data or wage data reliably  
21 obtained by institutions.

#### 22 **Using the SOC codes--We are not providing regulatory language at this time**

23 An institution now provides to the Department a CIP code (Classification of Instruction  
24 Program) for each program it offers. The institution would be required to associate the CIP code  
25 for each of its programs to the appropriate SOC codes identified on the Department of Labor’s  
26 O\*NET site and provide that information to prospective students.

## Issue Paper #7

### Proposed Regulatory Language

#### Team I – Program Integrity Issues

<b>Issue:</b>	Definition of a credit hour
<b>Statutory cites:</b>	HEA Sec. 481(a)(2) - definition of academic year; 481(b) - definition of eligible program; 484(b)(3) and (4) and 401 requirement to be enrolled half-time for loan eligibility; 496(a)(5)(H) - accreditation standards
<b>Regulatory cites:</b>	34 CFR 668.2(b) - definition of full-time student and definition of half-time student; 668.4 Payment period; 686.22 Calculation of a TEACH Grant for payment period; 690.63 Calculation of a Federal Pell Grant for a payment period; 691.63 Calculation of an ACG or National SMART Grant for payment period; 668.8(k) and (l) Clock hour/credit hour conversions
<b>Summary of issue:</b>	Credit hours are used to measure degree completion and to award title IV aid, but there is no commonly accepted definition of a credit hour

A credit hour is a unit that gives weighting to the value, level or time requirements of an academic course taken at an educational institution. At its most basic, a credit hour is a proxy measure of student learning. A credit hour is not consistently related to time or workload within institutions or between different types of institutions. Most postsecondary institutions do not have policies or even criteria that explain the basis for assigning credit hours to course work. When the measure is defined, it is usually as a measure combining a student's seat time in the classroom and outside-of-class work. Commonly used definitions are: one hour per week in class plus another two hours of study outside of class for 15 weeks equals one semester hours of credit; 12 hours per week in class equals a minimum full-time load; 120 credit hours equals a baccalaureate degree at an institution that uses semester hours. Although the metric purports to gauge faculty effort and student accomplishment, it does not measure learning based on specific goals or results.

The United States does not currently have any common frameworks for defining student outcomes for various degree levels (e.g., the associate, baccalaureate, masters and doctorate). Accrediting agencies and States, to varying extents, establish standards and criteria for degree levels. The HEA and implementing regulations require that, to be recognized by the Secretary, an accrediting agency must have standards to evaluate an institution's or program's "measures of program length and the objectives of the degrees or credentials offered." The Department has relied on accrediting agencies to make a judgment about program length and the amount of credit an institution or program grants for course work. Accrediting agency standards related to program length differ significantly in their specificity and there is standards generally do not define what a credit hour is. This lack of specificity in standards covering student achievement and program length has inherent limitations. Without a definition of a credit hour, may be the basis for abuse by institutions in determining sufficient course content for a credit hour. Such abuse is likely to be encouraged by the availability to a student of two Federal Pell Grants in an award year.

Over the last seven years, the Department's Office of the Inspector General (OIG) has conducted a number of reviews of accrediting agencies' standards for program length. These reviews have led the OIG to be concerned about the Department's total reliance on accrediting agencies for assessment of a factor that is a component of Title IV. On the other hand, if the Department does decide to define a credit hour for the purposes of Title IV, the definition cannot involve determinations of academic quality, as that is an area in which the relevant statutes look to accrediting agencies and exclude the Department.

The credit hour is used for Title IV purposes to define an eligible program, and academic year; and to determine enrollment status and the amount of student financial aid that may be disbursed per payment period. Neither the HEA nor implementing regulations include a definition of credit hour, though there are numerous references to credit hours and program length in both the statute and regulations. The HEA and regulations define "academic year" and "eligible program" in relation to credit hours or clock hours.

Section 481 of the HEA defines an academic year as requiring a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours; or a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours; and an undergraduate course of study must contain an amount of instructional time whereby a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures its program length in credit hours; or 900 clock hours in a course of study that measures its program length in clock hours. For most student financial aid programs, section 481 of the HEA defines an eligible program, as a program of at least

- 600 clock hours of instruction, 16 semester hours, or 24 quarter hours, offered during a minimum of 15 weeks, in the case of a program that—
  - provides a program of training to prepare students for gainful employment in a recognized profession; and
  - admits students who have not completed the equivalent of an associate degree; or
- 300 clock hours of instruction, 8 semester hours, or 12 hours, offered during a minimum of 10 weeks, in the case of an undergraduate program that requires the equivalent of an associate degree for admissions; or a graduate or professional program.

The regulations do provide formulas for the conversion of clock hours to credit hours. A school must determine if an undergraduate program qualifies as an eligible program after using the required formulas unless the school offers an undergraduate program in credit hours, and the program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree; or each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, and the degree offered by the school requires at least two academic years of study. These formulas reflect the fact that clock hour programs, unlike credit hour programs, require little, if any, out-of-class work. The regulations were adopted prior to change in the definition of an academic year for clock-hour programs to provide for only 26 weeks of instructional time in the definition as opposed to the 30 weeks of instructional time required for credit-hour programs.

Many American colleges and universities have developed weekend programs, accelerated programs and other innovative ways to serve students for whom the more traditional calendar is

not convenient. Distance education and other non-traditional modes of instruction, such as competency-based learning, are increasingly prevalent across postsecondary education. These ways of structuring and delivering education challenge the concept of "seat time" measures associated with credit hours.

In contrast to the United States, the Europeans have a way of awarding credits which is linked to student learning and is worth examining. The European Credit Transfer and Accumulation System (ECTS) is a standard for comparing the study attainment and performance of students of higher education across the European Union and other collaborating European countries. For successfully completed studies, ECTS credits are awarded. One academic year corresponds to 60 ECTS-credits that are equivalent to 1500–1800 hours of study in all countries irrespective of standard or qualification type and is used to facilitate transfer and progression toward a degree throughout the Union.

The ECTS must be placed within the context of the ongoing Bologna Process, which is the process of creating the European Higher Education Area (EHEA) and is based on cooperation between ministries, higher education institutions, students and staff from 46 countries, with the participation of international organizations. A key component of the effort is the establishment of qualifications frameworks at two levels. National qualifications frameworks describe what learners should know, understand and be able to do on the basis of a given qualification as well as how learners can move from one qualification to another within a system. National qualifications frameworks are developed to be compatible with the overarching framework of qualifications of the European Higher Education Area, which was adopted in 2005 and consists of three cycles (e.g. bachelor, master, doctorate). The overarching framework makes recognition of qualifications easier since specific qualifications can be related to a common framework.

### Comments and Questions

Several commenters urged the Department to establish minimum standards to define a credit hour for title IV purposes. Some expressed concern that the definition not be so narrow as to stem the tide of important innovations such as weekend courses, distance learning, and a variety of alternative schedules. Others strongly argued that accrediting agencies can best determine whether academic outcomes are being achieved and that they should be relied upon for determining whether an institution is appropriately awarding credits.

Should there be a regulatory definition of a credit hour for title IV purposes? Would a different definition be needed for postsecondary vocational education, for undergraduate education, and for graduate study? What about for distance education and other nontraditional programs? What relationship would such a title IV definition have to accrediting agencies standards for program length?

1 Draft regulatory language

2 PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF  
3 1965, AS AMENDED

4 §600.2 Definitions.

5 \* \* \* \* \*

6 Credit hour: (1) Except as provided in 34 CFR 668.8(k) and (1)—

7 (i) A Carnegie unit consisting of one hour of classroom or direct faculty instruction and a  
8 minimum of two hours of out of class student work for approximately fifteen weeks for one  
9 semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit; or

10 (ii) Academic work comparable to a Carnegie unit as established by the institution for  
11 laboratory work, internships, and practica.

12 (2) If the institution offers courses or programs for which the Carnegie unit is not  
13 meaningful or cannot be applied, the institution is responsible for establishing equivalencies in  
14 credit hours for the amount of academic work, as represented in intended learning outcomes and  
15 verified by evidence of their achievement, and for ensuring the equivalencies are in accordance  
16 with accrediting agency standards and State agency requirements.

17 PART 602—THE SECRETARY’S RECOGNITION OF ACCREDITING AGENCIES

18 §602.24 Additional procedures certain institutional accreditors must have.

19 \* \* \* \* \*

20 (c) Credit-hour policies. (1) The accrediting agency must confirm as part of its review  
21 for initial accreditation or preaccreditation, or renewal of accreditation, that an institution has  
22 policies and procedures for determining the credit hours awarded for all courses and programs  
23 offered in credit hours including credit hours based on equivalencies established for variations  
24 from the Carnegie unit under the definition of a credit hour in 34 CFR 600.2.

25 (2) The accrediting agency must evaluate and approve an institution's policies and  
26 procedures for determining credit hours awarded for courses and programs and the application of  
27 those policies and procedures by the institution in determining the credit hours awarded for  
28 courses and programs including equivalencies for variations from the definition of a Carnegie  
29 unit credit hour in 34 CFR 600.2.

30 PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

31 Subpart A—General

32 **§668.8 Eligible program.**

33 \* \* \* \* \*

34 (k) *Undergraduate educational program in credit hours.* (1) Except as provided in  
35 paragraph (k)(2) of this section, if an institution offers an undergraduate educational program in  
36 credit hours, the institution must use the formula contained in paragraph (l) of this section to  
37 determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of

38 this section, and the number of credit hours in that educational program for purposes of the Title  
39 IV, HEA programs, unless—

40 (4i) The program is at least two academic years in length and provides an associate  
41 degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the  
42 Secretary; or

43 (2ii) Each course within the program is acceptable for full credit toward that institution's  
44 associate degree, bachelor's degree, professional degree, or equivalent degree as determined by  
45 the Secretary, provided that--

46 (A) The institution's degree requires at least two academic years of study; and

47 (B) For each of the three award years prior to the current award year, students have  
48 enrolled in, and graduated from, that program.

49 (2) Notwithstanding paragraph (k)(1) of this section, a program is considered to be a  
50 clock-hour program for purposes of the title IV, HEA programs if--

51 (i) The program must be measured in clock hours for any purpose including, but not  
52 limit to--

53 (A) Receiving State approval or licensure to offer the program; or

54 (B) Determining that a graduate of the program qualifies to sit for a licensure  
55 examination or otherwise qualifies for licensure in or the authorization to practice the occupation  
56 that the graduate is intended to pursue; or

57            (ii) The institution does not continue to provide the clock hours that are the basis for the  
58 credit hours awarded for each course in the program and, except as provided in 668.4(e), to  
59 require attendance in those hours.

60            (1) *Formula.* For purposes of determining whether a program described in paragraph (k)  
61 of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and  
62 the number of credit hours in that educational program with regard to the Title IV, HEA  
63 programs—

64            (1) A semester hour must include at least 3037.5 clock hours of instruction;

65            (2) A trimester hour must include at least 3037.5 clock hours of instruction; and

66            (3) A quarter hour must include at least 2025 hours of instruction.

## Issue Paper #8

### Team I – Program Integrity Issues

**Issue:** Agreements between Institutions of Higher Education

**Statutory cites:** N/A

**Regulatory cites:** 34 CFR 668.5

**Summary question(s):** Should the provisions on agreements between two eligible institutions of higher education be changed to limit the amount of instruction that may be offered away from the “home” institution? Should additional limitations be placed on such agreements involving an ineligible institution?

**Summary of issue:** Two or more institutions may enter into a consortium or contractual agreement so that a student can continue to receive title IV funds while studying at an institution or organization other than his or her “home” institution, or while enrolled in a program that is offered in part by another institution at the student's "home" institution.

The current regulations cover written agreements between institutions in three different situations: (1) consortium agreements, which are written arrangements between eligible institutions; (2) contractual agreements, which are written arrangements between an eligible institution and an ineligible institution or organization; and (3) study abroad arrangements, which involve either a written contractual or consortium agreement between two or more institutions. The underlying assumption of all these agreements is that the home institution has found the other institution’s or organization’s academic standards to be equivalent to its own, and an acceptable substitute for its own instruction.

For institutions that enter into a contractual agreement, i.e., an agreement between an eligible institution and an ineligible institution or organization, there is a limit on the portion of the program that can be provided by the ineligible entity. If both the “home” institution and the ineligible institution or organization are owned or controlled by the same individual, partnership, or corporation, no more than 25% of the educational program may be provided by the ineligible entity. If the eligible institution and ineligible entity are separately owned or controlled, the ineligible institution or organization may provide up to 50 percent of the educational program. However, the “home” institution’s accrediting agency or state agency (in the case of a public postsecondary vocational institution) must determine and confirm in writing that the agreement meets its standards for contracting out educational services.

In a consortium agreement, i.e., a written arrangement between eligible institutions, there is no limit on the portion of the educational program that may be provided by eligible institutions other than the “home” institution. The current regulations provide that under a consortium agreement, eligible institutions other than the “home” institution may provide all or part of the educational program, and the Secretary considers that educational program to be an eligible program as long as it satisfies the definition of an eligible program under §668.8.

**Comments and questions:**

- Should an institution be permitted to confer a degree or certificate bearing its name when it has provided none of the instruction and conducted none of the evaluations to determine if the student has satisfied the requirements of the program?
- Should institutions be required to provide a least a minimum portion of a program if they are to award the degree or certificate?
- Should accrediting agencies be required to review consortium agreements if all or a majority of an educational program is being provided by institutions other than the “home” institution?
- If the arrangement is between an institution that has not been approved by its accrediting agency to offer distance education programs and one that has been approved for distance education, should the first institution be allowed to offer a distance education program?
- Should different limitations be imposed when both institutions are under the same ownership?

- 1 | • New Item for discussion: Should different limitations be imposed when both  
2 | institutions are under the same ownership, such as requiring the institution that  
3 | enrolls a student to offer at least 25% of a program?

**Draft Regulatory Language:**

4 | **§ 602.22 Substantive change.**

5 | (a) If the agency accredits institutions, it must maintain adequate substantive change  
6 | policies that ensure that any substantive change to the educational mission, program, or  
7 | programs of an institution after the agency has accredited or preaccredited the institution  
8 | does not adversely affect the capacity of the institution to continue to meet the agency’s  
9 | standards. The agency meets this requirement if—

10 | (1) \* \* \*

11 | (2) The agency’s definition of substantive change includes at least the following types of  
12 | change:

13 | \* \* \*

14 | (vii) If the agency's accreditation of an institution enables the institution to seek eligibility  
15 | to participate in the title IV, HEA programs--

1 ~~;~~ (A) the entering into a contract under which an institution or organization not  
2 certified to participate in the title IV, HEA programs ~~offers-provides~~ more than 25  
3 percent of one or more of the accredited institution's educational programs; ~~or~~

4 (B) the entering into a written arrangement with another eligible institution, or  
5 with a consortium of eligible institutions, under which the other institution or consortium  
6 of eligible institutions provides more than 50 percent of one or more of the accredited  
7 institution's educational programs.

[Note: §602.22 was amended in the final Accreditation Regulations published on October 27, 2009. §602.22(a)(2)(vii) as provided above, without the changes proposed, will be effective on July 1, 2010.]

8 **§ 668.5 Written arrangements to provide educational programs.**

9 (a) *Written arrangements between eligible institutions.* If an eligible institution enters into  
10 a written arrangement with another eligible institution, or with a consortium of eligible  
11 institutions, under which the other eligible institution or consortium provides ~~all or~~ part of  
12 the educational program of students enrolled in the former institution, the Secretary  
13 considers that educational program to be an eligible program if ~~—~~

14 ~~(1) if~~ The educational program otherwise satisfies the requirements of §668.8; ~~and~~  
15 (2) (i) The portion of the educational program provided under a written arrangement with  
16 another eligible institution, or with a consortium of eligible institutions, is 50 percent or  
17 less; or-

18 (ii) If the portion of the educational program provided under a written arrangement with  
19 another eligible institution, or with a consortium of eligible institutions, is more than 50  
20 percent, the institution's accrediting agency, or if the institution is a public postsecondary  
21 vocational educational institution, the State agency listed in the Federal Register in  
22 accordance with 34 CFR part 603, has specifically determined that the institution's  
23 arrangement meets the agency's standards for written arrangements to provide  
24 educational programs.

25 (b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible  
26 institution enters into a written arrangement with a foreign institution, or an organization  
27 acting on behalf of a foreign institution, under which the foreign institution provides part

1 of the educational program of students enrolled in the eligible institution, the Secretary  
2 considers that educational program to be an eligible program if it otherwise satisfies the  
3 requirements of paragraphs (c)(1) through (c)(3) of this section.

4 (c) *Written arrangements between an eligible institution and an ineligible institution or*  
5 *organization.* If an eligible institution enters into a written arrangement with an  
6 institution or organization that is not an eligible institution under which the ineligible  
7 institution or organization provides part of the educational program of students enrolled  
8 in the eligible institution, the Secretary considers that educational program to be an  
9 eligible program if—

10 (1) The ineligible institution or organization has not had its eligibility to participate in the  
11 title IV, HEA programs terminated by the Secretary, or has not voluntarily withdrawn  
12 from participation in those programs under a termination, show-cause, suspension, or  
13 similar type proceeding initiated by the institution's State licensing agency, accrediting  
14 agency, guarantor, or by the Secretary;

15 (2) The educational program otherwise satisfies the requirements of §668.8; and

16 (3)(i) The ineligible institution or organization provides not more than 25 percent of the  
17 educational program; or

18 (ii)(A) The ineligible institution or organization provides more than 25 percent but not  
19 more than 50 percent of the educational program;

20 (B) The eligible institution and the ineligible institution or organization are not owned or  
21 controlled by the same individual, partnership, or corporation; and

22 (C) The eligible institution's accrediting agency, or if the institution is a public  
23 postsecondary vocational educational institution, the State agency listed in the Federal  
24 Register in accordance with 34 CFR part 603, has specifically determined that the  
25 institution's arrangement meets the agency's standards for the contracting out of  
26 educational services.

27 (d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written  
28 arrangement as described in paragraph (a), (b), or (c) of this section, except as provided  
29 in paragraph (d)(2) of this section, the institution at which the student is enrolled as a  
30 regular student must determine the student's eligibility for title IV, HEA program funds,  
31 and must calculate and disburse those funds to that student.

1 (2) In the case of a written arrangement between eligible institutions, the institutions may  
2 agree in writing to have any eligible institution in the written arrangement make those  
3 calculations and disbursements, and the Secretary does not consider that institution to be  
4 a third-party servicer for that arrangement.

5 (3) The institution that calculates and disburses a student's title IV, HEA program  
6 assistance under paragraph (d)(1) or (d)(2) of this section must—

7 (i) Take into account all the hours in which the student enrolls at each institution that  
8 apply to the student's degree or certificate when determining the student's enrollment  
9 status and cost of attendance; and (ii) Maintain all records regarding the student's  
10 eligibility for and receipt of title IV, HEA program funds.

11 (e) Information made available to students. If an institution enters into a written  
12 arrangement as described in paragraph (a), (b) or (c) of this section, the institution must  
13 provide adequate information to ensure that students enrolled in a program covered by  
14 the written arrangement understand—

15 (1) The portion of the program that the institution is not providing;

16 (2) The name or names of the institutions or organizations that are providing the portion  
17 of the program that the institution is not providing;

18 (3) The method of delivery of the portion of the program that the institution is not  
19 providing; and

20 (4) The authorization of the institution to offer the program in the format being provided.

## **Issue Paper #9**

### **Team I – Program Integrity Issues**

**Issue:** Verification of Information Included on Student Aid Applications

**Statutory cites:** HEA, Title IV, Part F

**Regulatory cites:** 34 CFR 668, Subpart E (§§668.51 through 668.61)

**Summary question(s):** How can the current verification regulations be modified to align them with recent changes to the need analysis provisions in the statute and with operational improvements in the application processing system.

Under current regulations, an institution is required to verify the application information of no more than 30 percent of its total number of applicants for assistance under the Federal Pell Grant, ACG, National SMART Grant, Federal Direct Stafford/Ford Loan, campus-based, and Federal Stafford Loan programs in an award year that are selected by the Secretary based on edits specified by the Secretary to ensure that Federal aid applicants have accurately submitted the information used to determine their eligibility for financial aid. An institution may only include those applicants selected for verification by the Secretary in its calculation of 30 percent of total applicants. Complying with the verification provisions does not reduce or remove the requirement that an institution resolve conflicting information before it disburses aid. An institution may choose to verify more than 30 percent of its applicants.

An institution must require an applicant selected for verification to submit acceptable documentation that will verify or update the following information used to determine the applicant's EFC:

- (1) Adjusted gross income (AGI) for the base year if base year data was used in determining eligibility, or income earned from work, for a non-tax filer.
- (2) U.S. income tax paid for the base year if base year data was used in determining eligibility.
- (3) The aggregate number of family members in the household.
- (4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.
- (5) Untaxed income and benefits for the base year if base year data was used in determining eligibility.

An institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

The Department believes that simplifying the FAFSA and permitting data importation from the IRS make a comprehensive review of the verification process advisable at this time. Because it will take some time for some changes to be effective and for some systems changes to be made, it makes sense, in revising the verification regulations, to write them so they are flexible enough to accommodate ongoing changes and yet also provide an acceptable level of assurance that the students who are receiving Federal funds are eligible to receive them. Although many changes on the horizon may permit a reduction in items verified, Department experience with inappropriate designations of dependency status and other concerns suggests that perhaps there should be additions to the verification requirements in addition to possible deletions or restructuring of requirements.

**Comments and questions:** During the public hearings held last summer, and in written comments submitted to the Department, some in the financial aid community expressed concern that the verification process is complicated, difficult to understand and invasive for many families. One area that poses particular challenges to the successful completion of the verification process is the level of expertise relating to the federal tax code that financial aid officers are expected to have in order to resolve discrepancies such as determining whether the student and his or her family filed their income taxes properly if required to file. Many of the financial aid administrators who testified or provided comments said that tax filing status, and appropriate reporting of income pose particular problems. If the applicant needs to file or amend a tax return before verification can proceed, it can be a very lengthy process.

There was also concern expressed that requiring large numbers of students to go through an extensive verification process can reduce the odds of the students completing the process and receiving aid in a timely manner. Low income students are frequently chosen for verification because they have more difficulty completing the application; to the extent that they do not complete the process and do not enroll, the aid programs are not serving their intended purpose.

It was pointed out that simplification of the FAFSA is one important way to reduce the number of items that require verification. In simplifying the FAFSA, the Department can carefully examine each data element to determine whether it is really necessary in order to determine eligibility for student financial aid funds.

Another commenter stated that the Higher Education Opportunity Act (HEOA) of 2008 authorizes the Secretary to pre-populate the FAFSA with tax data from the Internal Revenue Service (IRS) with the applicant's consent. This would relieve applicants of the burden of reviewing, correcting and resubmitting much of the most error-prone information on the FAFSA, while reducing and simplifying the verification process for schools. Beginning in January 2010, applicants will have the ability to import IRS tax data into their electronic FAFSA which eliminates the need to verify those data elements imported.

Clearly, setting appropriate verification policy means addressing conflicting goals: ensuring that the right students receive the right amount of money at the right time while reducing improper payments to ineligible students. In consideration of these multiple, sometimes conflicting goals, and building on the comments received during the hearings and comment process, the following questions are offered as a starting point for discussion.

- Instead of specifying that five items, as applicable, must be verified for each applicant, should the regulations be revised to say that the Secretary will specify the items that must be verified for an applicant on the applicant's ISIR? The five items in current regulations might be listed, but wording changed to allow for the following changes in policy and procedures:
  - The AGI and income taxes need not be verified for those applicants who have imported IRS data without modification.
  - At such time as the Department is able to isolate the particular item or combination of items that suggested a potential problem and triggered a verification request, such as number in household or number in postsecondary education, the verification requirement could be limited to one or two items.
  - If assets are eliminated from the computation, but students and families above a certain net worth threshold are ineligible for Federal need-based aid, it may be necessary to leave a door open for some kind of verification. Until there is a statute to implement, this provision is necessarily nebulous. But it speaks to the need to allow for flexibility in tailoring items to be verified.
- Should additional potential verification items, such as dependency status, which has generated some concern since it was eliminated as a verification item, be added to the list?
- Should some general language be added requiring verification of other items, as identified by the Secretary?
- Should all first time applicants be verified? This might help first time students through the process and reduce the need for verifying their applications in future years.
- The provision that institutions are required to verify no more than 30% of applicants was originally based on a statutory provision that has since been removed. Should the 30% limitation be revisited?
- If the regulations are restructured so that institutions are required to verify fewer data elements, should institutions be required to verify a higher percentage of applicants?

**Updated information since November 2-6, 2009 meetings:**

**Draft Regulatory Language:**

1 Subpart E\_Verification and Updating of Student Aid Application Information

2  
3 §668.51 General.

4 (a) Scope and purpose. The regulations in this subpart govern the verification by institutions of  
5 information submitted by applicants for student financial assistance ~~in connection with the~~  
6 ~~calculation of their expected family contributions (EFC) for under~~ the Federal Pell Grant,  
7 ~~ACG, National SMART Grant, campus-based~~ Federal Supplemental Educational Opportunity  
8 Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, Federal Stafford Loan, and  
9 Federal Direct Stafford/Ford Loan programs.

10 (b) Applicant responsibility. If the Secretary or the institution requests documents or  
11 information from an applicant under this subpart, the applicant shall provide the specified  
12 documents or information.

13 (c) Foreign schools. The Secretary exempts from the provisions of this subpart participating  
14 institutions ~~participating in the Federal Stafford Loan Program~~ that are not located in a State.

15  
16 §668.52 Definitions.

17 The following definitions apply to this subpart:

18 ~~Base year means the calendar year proceeding the first calendar year of an award year.~~

19 ~~Edits means a set of pre-established factors for identifying—~~

20 ~~—(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent~~  
21 ~~information; and~~

22 ~~—(b) Randomly selected student aid applications.~~

23 ~~Institutional student information record as defined in 34 CFR 690.2 and 691.2 for purposes of~~  
24 ~~the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG,~~  
25 ~~Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.~~

26 *Expected Family Contribution (EFC):* The amount which a student and the student's  
27 family is expected to contribute towards the student's postsecondary education determined in  
28 accordance with section 473 of the HEA.

29 *Free Application for Federal Student Aid (FAFSA):* The student aid application  
30 provided for under section 483 of the HEA which is used to determine eligibility for the title IV,  
31 HEA programs.

1 Institutional Student Information Record (ISIR): An electronic record that the Secretary  
2 transmits to an institution, for purposes of the title IV, HEA programs, that includes an  
3 applicant's—

4 (1) Personal identification information;

5 (2) Application data used to determine eligibility for title IV aid calculate the applicant's  
6 EFC; and

7 (3) EFC.

8 ~~Student aid application means an application approved by the Secretary and submitted~~  
9 ~~by a person to have his or her EFC determined under the Federal Pell Grant, ACG, National~~  
10 ~~SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, or William D. Ford~~  
11 ~~Federal Direct Loan programs.~~

12 Specified year means the:

13 (1) Base year which is the calendar year preceding the first calendar year of an award  
14 year; or

15 (2) A year preceding the base year.

16 Subsidized student financial assistance programs are title IV, HEA programs for  
17 which eligibility is determined on the basis of a student's EFC.

18 Unsubsidized student financial assistance programs are title IV, HEA programs for  
19 which eligibility is not based on a student's EFC.

20  
21 §668.53 Policies and procedures.

22 (a) An institution shall establish and use written policies and procedures for verifying  
23 information contained in a ~~student aid application~~FAFSA in accordance with the provisions of  
24 this subpart. These policies and procedures must include--

25 (1) The time period within which an applicant shall provide the documentation;

26 (2) The consequences of an applicant's failure to provide required documentation within the  
27 specified time period;

1 (3) The method by which the institution notifies an applicant of the results of verification if, as  
2 a result of verification, the applicant's EFC changes and results in a change in the applicant's  
3 award or loan;

4 (4) The procedures the institution requires an applicant to follow to correct ~~application-FAFSA~~  
5 information determined to be in error; and

6 (5) The procedures for making referrals under §668.16(g).

7 (b) The institution's procedures must provide that it shall furnish, in a timely manner, to each  
8 applicant selected for verification a clear explanation of--

9 (1) The documentation needed to satisfy the verification  
10 requirements; and

11 (2) The applicant's responsibilities with respect to the  
12 verification of ~~application-FAFSA~~ information, including the deadlines for completing any  
13 actions required under this subpart and the consequences of failing to complete any required  
14 action.

15 (c) An institution's procedures must provide that an applicant whose FAFSA is selected  
16 for verification by the Secretary, is required to update and verify the information the Secretary  
17 specifies before the institution exercises any authority under section 479A(a) of the HEA to  
18 make changes to the applicant's cost of attendance or to the values of the data items required to  
19 calculate the EFC.

20  
21 §668.54 Selection of ~~applications~~FAFSA information for verification.

22  
23 (a) General requirements. (1) Except as provided in paragraph (b) of this section, an institution  
24 shall require an applicant to verify ~~application-FAFSA~~ information as specified in this paragraph.

25 (2)(i) An institution shall require each applicant whose ~~application-FAFSA information~~ is  
26 selected for verification ~~on the basis of edits specified by the Secretary, to verify all of the~~  
27 ~~applicable items information the Secretary specifies pursuant specify to §668.56, except that no~~  
28 ~~institution is required to verify the applications of more than 30 percent of its total number of~~  
29 ~~applicants for assistance under the Federal Pell Grant, ACG, National SMART Grant, Federal~~  
30 ~~Direct Stafford/Ford Loan, campus based, and Federal Stafford Loan programs in an award year.~~

1 ~~—(ii) An institution may only include those applicants selected for verification by the Secretary~~  
2 ~~in its calculation of 30 percent of total applicants.~~

3 (3) If an institution has reason to believe that any information on ~~an application~~ FAFSA ~~used to~~  
4 ~~determine eligibility for the Title IV HEA programs~~ calculate an EFC is inaccurate, it shall require  
5 the applicant to verify ~~the that~~ information. ~~that it has reason to believe is inaccurate.~~

6 ~~(4) If an applicant is selected to verify the information on his or her application under~~  
7 ~~paragraph (a)(2) of this section, the institution shall require the applicant to verify the~~  
8 ~~information as specified in §668.56 on each additional application he or she submits for that~~  
9 ~~award year, except for information already verified under a previous application submitted for~~  
10 ~~the applicable award year.~~

11 ~~(54) An institution or the Secretary~~ may require an applicant to verify any information ~~data~~  
12 ~~elements~~ that ~~the institution or the Secretary~~ it specifies.

13 (b) Exclusions from verification. (1) An institution need not verify ~~an application~~ FAFSA  
14 information submitted for an award year if the applicant dies during the award year.

15 (2) Unless the institution has reason to believe that the information reported by the applicant is  
16 incorrect, it need not verify ~~applications~~ FAFSA information of the following applicants:

17 ~~(i) An applicant who is—~~

18 ~~—(A) A legal resident of and, in the case of a dependent student, whose parents are also legal~~  
19 ~~residents of, the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or~~

20 ~~—(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of, the~~  
21 ~~Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.~~

22 ~~(ii) An applicant who is incarcerated at the time at which~~  
23 ~~verification would occur.~~

24 ~~(iii) An applicant who is a dependent student, whose parents are residing in a country other~~  
25 ~~than the United States and cannot be contacted by normal means of communication, as~~  
26 ~~documented by the institution.~~

27 ~~(iv) An applicant who is an immigrant and who arrived in the United States during either~~  
28 ~~calendar year of the award year. Put something over in the documentation side.~~

29 ~~(vii) An applicant whose parents' contact information~~ address is unknown and cannot be  
30 obtained by the applicant.

1 (viii) An applicant who is a dependent student, both of whose parents are ~~deceased or are~~  
2 ~~physically or~~ mentally incapacitated.

3 (viiiv) An applicant who does not receive assistance for reasons other than his or her failure to  
4 verify the information on the ~~application~~ FAFSA or who receives only unsubsidized student  
5 financial assistance.

6 (viii) An applicant who transfers to the institution, had previously completed the verification  
7 process at the institution from which he or she transferred, and applies for assistance on the same  
8 ~~application~~ FAFSA used at the previous institution, if the current institution obtains a letter from  
9 the previous institution stating that it has verified the applicant's information, the transaction  
10 number of the verified ~~application~~ FAFSA, ~~and, if relevant, the provision used in §668.59 for not~~  
11 ~~recalculating the applicant's EFC~~.

12 (3) An institution need not require an applicant to document a spouse's information or provide  
13 a spouse's signature if--

14 ~~(i) The spouse is deceased;~~

15 (ii) The spouse is mentally ~~or physically~~ incapacitated;

16 (iii) The spouse is residing in a country other than the United States and cannot be contacted  
17 by normal means of communication, as documented by the institution; or

18 ~~(iiiv)~~ The spouse cannot be located because his or her ~~address~~ contact information is unknown  
19 and cannot be obtained by the applicant.

20  
21 §668.55 Updating information.

22  
23 (a)(1) Unless the provisions of paragraph (a)(2) ~~or (a)(3)~~ of this section apply, an applicant is  
24 required to update--

25 (i) The number of family members in the applicant's household and the number of those  
26 household members attending postsecondary educational institutions, in accordance with  
27 provisions of paragraph (b) of this section; and

28 (ii) His or her dependency status in accordance with the provisions of paragraph ~~(e)~~ of this  
29 section.

30 (2) An institution need not require an applicant to verify the information contained in his or  
31 her ~~application~~ FAFSA for assistance in an award year if--

1 | (i) The applicant previously submitted ~~an application~~ FAFSA for assistance for that award  
2 | year;

3 | (ii) The applicant updated and verified the information contained in that ~~application~~FAFSA;  
4 | and

5 | (iii) No change in the information to be updated has taken place since the last update.

6 | ~~(3) If, as a result of a change in the applicant's marital status, the number of family members in  
7 | the applicant's household, the number of those household members attending postsecondary  
8 | education institutions, or the applicant's dependency status changes, the applicant shall not  
9 | update those factors or that status.~~

10 | (b) If the number of family members in the applicant's household or the number of those  
11 | household members attending postsecondary educational institutions changes ~~for a reason other  
12 | than a change in the applicant's marital status~~, an applicant who is selected for verification shall  
13 | update the information contained in his or her ~~FAFSA~~application regarding those factors so that  
14 | the information is correct as of the day the applicant verifies the information.

15 | ~~(c) If an applicant has received Federal Pell Grant, ACG, National SMART Grant, campus-  
16 | based, Federal Stafford Loan, or Federal Direct Stafford/Ford Loan program assistance for an  
17 | award year, and the applicant subsequently submits another application for assistance under any  
18 | of those programs for that award year, and the applicant is required to update household size and  
19 | number attending postsecondary educational institutions on the subsequent application, the  
20 | institution—~~

21 | ~~—(1) Is required to take that newly updated information into account when awarding for that  
22 | award year further Federal Pell Grant, ACG, National SMART Grant, or campus-based,  
23 | assistance or certifying a Federal Stafford Loan application, or originating a Direct Subsidized  
24 | Loan; and~~

25 | ~~—(2) Is not required to adjust the Federal Pell Grant, ACG, National SMART Grant, or campus-  
26 | based assistance previously awarded to the applicant for that award year, or any previously  
27 | certified Federal Stafford Loan application or previously originated Direct Subsidized Loan for  
28 | that award year, to reflect the newly updated information unless the applicant would otherwise  
29 | receive an overaward.~~

30 | ~~(dc)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's  
31 | dependency status changes after the applicant applies to have his or her EFC calculated for an the~~

1 | award year, the applicant must ~~file-update the information a new application for that award to~~  
2 | ~~year-reflecting~~ the applicant's new dependency status regardless of whether the applicant is  
3 | selected for verification.

4 | ~~(2) If the institution has previously certified a Federal Stafford Loan application for an~~  
5 | ~~applicant, the applicant shall not update his or her dependency status on the Federal Stafford~~  
6 | ~~Loan application. If the institution has previously originated a Direct Subsidized Loan for a~~  
7 | ~~borrower, the school shall not update the borrower's dependence status on the loan origination~~  
8 | ~~record.~~

9 |  
10 | §668.56 ~~Items-Information~~ to be verified.

11 |  
12 | ~~(a) For each award year the Secretary shall publish in the Federal Register the~~  
13 | ~~information that is subject to verification.~~

14 | ~~(b) For each applicant whose application is selected for verification by the Secretary,~~  
15 | ~~the Secretary shall specify the information to be verified.~~

16 | ~~—(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall~~  
17 | ~~require an applicant selected for verification under §668.54(a)(2) or (3) to submit acceptable~~  
18 | ~~documentation described in §668.57 that will verify or update the following information used to~~  
19 | ~~determine the applicant's EFC:~~

20 | ~~—(1) Adjusted gross income (AGI) for the base year if base year data was used in determining~~  
21 | ~~eligibility, or income earned from work, for a non-tax filer.~~

22 | ~~—(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.~~

23 | ~~—(3)(i) For an applicant who is a dependent student, the aggregate number of family members in~~  
24 | ~~the household or households of the applicant's parents if—~~

25 | ~~—(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number~~  
26 | ~~of family members is greater than two; or~~

27 | ~~—(B) The applicant's parents are married to each other and not separated and the aggregate~~  
28 | ~~number of family members is greater than three.~~

29 | ~~—(ii) For an applicant who is an independent student, the number of family members in the~~  
30 | ~~household of the applicant if—~~

1 ~~—(A) The applicant is single, divorced, separated, or widowed and the number of family~~  
2 ~~members is greater than one; or~~  
3 ~~—(B) The applicant is married and not separated and the number of family members is greater~~  
4 ~~than two.~~  
5 ~~—(4) The number of family members in the household who are enrolled as at least half-time~~  
6 ~~students in postsecondary educational institutions if that number is greater than one.~~  
7 ~~—(5) The following untaxed income and benefits for the base year if base year data was used in~~  
8 ~~determining eligibility—~~  
9 ~~—(i) Social Security benefits if the institution has reason to believe that those benefits were~~  
10 ~~received and were not reported or were incorrectly reported;~~  
11 ~~—(ii) Child support if the institution has reason to believe that child support was received;~~  
12 ~~—(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA)~~  
13 ~~or Keogh account;~~  
14 ~~—(iv) Interest on tax-free bond;~~  
15 ~~—(v) Foreign income excluded from U.S. income taxation if the~~  
16 ~~institution has reason to believe that foreign income was received;—(vi) The earned income~~  
17 ~~credit taken on the applicant's tax return;~~  
18 ~~and~~  
19 ~~—(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base~~  
20 ~~year which is included on the tax return form, excluding information contained on schedules~~  
21 ~~appended to such forms.~~  
22 ~~—(b) If an applicant selected for verification submits an SAR or output document to the~~  
23 ~~institution or the institution receives the applicant's ISIR, within 90 days of the date the applicant~~  
24 ~~signed his or her application, or if an applicant is selected for verification under §668.54(a)(2),~~  
25 ~~the institution need not require the applicant to~~  
26 ~~verify—~~  
27 ~~—(1) The number of family members in the household; or~~  
28 ~~—(2) The number of family members in the household, who are enrolled as at least half-time~~  
29 ~~students in postsecondary educational institutions.~~

1 ~~—(c) If the number of family members in the household or the amount of child support reported~~  
2 ~~by an applicant selected for verification is the same as that verified by the institution in the~~  
3 ~~previous award year, the institution need not require the applicant to verify that information.~~  
4 ~~—(d) If the family members who are enrolled as at least half-time students in postsecondary~~  
5 ~~educational institutions are enrolled at the same institution as the applicant, and the institution~~  
6 ~~verifies their enrollment status from its own records, the institution need not require the applicant~~  
7 ~~to verify that information.~~  
8 ~~—(e) If the applicant or the applicant's spouse or, in the case of a dependent student, the~~  
9 ~~applicant's parents receive untaxed income or benefits from a Federal, State, or local government~~  
10 ~~agency determining their eligibility for that income or those benefits by means of a financial~~  
11 ~~needs test, the institution need not require the untaxed income and benefits to be verified.~~

12  
13 § 668.57 Acceptable documentation.

14  
15 If an applicant is selected to verify any of the following information, an institution must obtain  
16 the documentation indicated.

17  
18 (a) Adjusted Gross Income (AGI), income earned from work, and U.S. income tax paid. (1)  
19 Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall  
20 require an applicant selected for verification ~~of to verify~~ AGI, income earned from work and/or  
21 U.S. income tax paid to by submitting to it, ~~if relevant~~—

22 (i) A copy of the income tax return or an IRS form which lists tax account information of the  
23 applicant, his or her spouse, and his or her parents. The copy of the return must ~~be signed by~~  
24 include the signature (which need not be an original) of the filer of the return or ~~of by~~ one of the  
25 filers of a joint return;

26 (ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2  
27 received by the parent whose income is being taken into account if--

28 (A) The parents filed a joint return; and

29 (B) The parents are divorced or separated or one of the parents has died; and

30 (iii) For an independent student, a copy of each IRS Form W-2 he or she received if the  
31 independent student--

1 (A) Filed a joint return; and

2 (B) Is a widow or widower, or is divorced or separated.

3 (2) An institution may accept, in lieu of an income tax return or an IRS form which lists tax  
4 account information, the information reported for an item on the applicant's ISIR if the Secretary  
5 has identified that item as having been obtained from the IRS.

6 ~~(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this~~  
7 ~~section to provide a copy of his or her tax return does not have a copy of that return, the~~  
8 ~~institution may require that individual to submit, in lieu of a copy of the tax return, a copy of an~~  
9 ~~IRS form which lists tax account information.~~

10 (3) An institution shall accept, in lieu of an income tax return or an IRS form which listing of  
11 tax account information of an individual whose ~~income information~~ was used in determining an  
12 applicant's eligibility for the title IV, HEA programs calculating the EFC of an applicant, the  
13 documentation set forth in paragraph (a)(4) of this section if the individual for the base-specified  
14 year--

15 (i) Has not filed and is not required to file an income tax return;

16 (ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

17 (iii) Has requested a copy of the tax return or an IRS form which lists tax account  
18 information~~Listing of Tax Account Information~~, and the IRS or a government of a U.S. territory  
19 or commonwealth or a foreign central government cannot locate the return or provide an IRS  
20 form which lists tax account information~~Listing of Tax Account Information~~.

21 (4) An institution shall accept--

22 (i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that  
23 individual certifying that he or she has not filed nor is required to file an income tax return for  
24 the base-specified year and certifying for that year that individual's--

25 (A) Sources of income earned from work as stated on the application; and

26 (B) Amounts of income from each source;

27 (ii) For an individual described in paragraph (a)(3)(ii) of this section--

28 (A) A copy of the IRS Form 4868, "Application for Automatic  
29 Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the  
30 IRS for the base-specified year, or a copy of the IRS's approval of an extension beyond the

1 automatic four-month extension if the individual requested an additional extension of the filing  
2 time; and

3 (B) A copy of each IRS Form W-2 that the individual received for the base-specified year, or  
4 for a self-employed individual, a statement signed by the individual certifying the amount of  
5 ~~adjusted gross income~~ the AGI for the base-specified year; and

6 (iii) For an individual described in paragraph (a)(3)(iii) of this section--

7 (A) A copy of each IRS Form W-2 that the individual received for the base-specified year; or

8 (B) For an individual who is self-employed or has filed an income tax return with a  
9 government of a U. S. territory or commonwealth, or a foreign central government, a statement  
10 signed by the individual certifying the amount of ~~adjusted gross income~~ the AGI for the base  
11 specified year.

12 (5) An institution shall require an individual described in paragraph (a)(3)(ii) of this section to  
13 provide to it a copy of his or her completed income tax return when filed. When an institution  
14 receives the copy of the return, it ~~may~~ shall re-verify the adjusted gross income and taxes paid by  
15 the applicant and his or her spouse or parents.

16 (6) If an individual who is required to submit an IRS Form W-2 under this paragraph is unable  
17 to obtain one in a timely manner, the institution may permit that individual to set forth, in a  
18 statement signed by the individual, the amount of income earned from work, the source of that  
19 income, and the reason that the IRS Form W-2 is not available in a timely manner.

20 ~~(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax~~  
21 ~~return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's~~  
22 ~~return that has been signed by the preparer of the return or stamped with the name and address of~~  
23 ~~the preparer of the return.~~

24 (b) Number of family members in household. An institution shall require an applicant selected  
25 for verification to verify the number of family members in the household by submitting to it a  
26 statement signed by the applicant and one of the applicant's parents if the applicant is a  
27 dependent student, or the applicant if the applicant is an independent student, listing the name  
28 and age of each family member in the household and the relationship of that household member  
29 to the applicant.

30 (c) Number of family household members enrolled in eligible postsecondary institutions. (1)  
31 ~~Except as provided in §668.56(b), (c), (d), and (e), a~~ An institution shall require an applicant

1 selected for verification to verify annually information included on the application regarding the  
2 number of household members in the applicant's family enrolled on at least a half-time basis in  
3 eligible postsecondary institutions. The institution shall require the applicant to verify the  
4 information by submitting a statement signed by the applicant and one of the applicant's parents,  
5 if the applicant is a dependent student, or by the applicant if the applicant is an independent  
6 student, listing--

7 (i) The name of each family member who is or will be attending an eligible postsecondary  
8 educational institution as at least a half-time student in the award year;

9 (ii) The age of each student; and

10 (iii) The name of the institution attended by each student.

11 (2) If the institution has reason to believe that the information included on the application  
12 regarding the number of family household members enrolled in postsecondary institutions is  
13 inaccurate, the institution shall require--

14 ~~—(i) The statement required in paragraph (c)(1) of this section from the individuals described in  
15 paragraph (c)(1) of this section; and~~

16 ~~—(ii) A~~ statement from each institution named by the applicant in response to the requirement  
17 of paragraph (c)(1)(iii) of this section that the household member in question is or will be  
18 attending the institution on at least a half-time basis, unless ==

19 \_\_\_\_\_ (i) ~~T~~he institution the student is attending determines that such a statement is not  
20 available because the household member in question has not yet registered at the  
21 institution he or she plans to attend; or

22 \_\_\_\_\_ (ii) ~~T~~he institution has information ~~itself~~ that the student will be attending the same  
23 school as the applicant.

24 ~~(d) Untaxed income and benefits. An institution shall require an applicant selected for  
25 verification to verify--~~

26 ~~—(1) Untaxed income and benefits described in §668.56(a)(5)(iii), (iv), (v), (vi), and (vii) by  
27 submitting to it--~~

28 ~~—(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return,  
29 if collected under paragraph (a) of this section, or the IRS listing of tax account information if  
30 collected by the institution to verify adjusted gross income; or~~

1 ~~—(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant~~  
2 ~~individuals certifying that no tax return was filed or is required to be filed and providing the~~  
3 ~~sources and amount of untaxed income and benefits specified in Sec.668.56(a)(5) (iii), (iv), (v),~~  
4 ~~and (vi);~~

5 ~~—(2) Social Security benefits if the institution has reason to believe that those benefits were~~  
6 ~~received and were not reported, or that the applicant has incorrectly reported Social Security~~  
7 ~~benefits received by the applicant, the applicant's parents, or any other children of the applicant's~~  
8 ~~parents who are members of the applicant's household, in the case of a dependent student, or by~~  
9 ~~the applicant, the applicant's spouse, or the applicant's children in the case of an independent~~  
10 ~~student. The applicant shall verify Social Security benefits by submitting a document from the~~  
11 ~~Social Security Administration showing the amount of benefits received in the appropriate~~  
12 ~~calendar year for the appropriate individuals listed above or, at the institution's option, a~~  
13 ~~statement signed by both the applicant and the applicant's parent, in the case of a dependent~~  
14 ~~student, or by the applicant, in the case of an independent student, certifying that the amount~~  
15 ~~listed on the applicant's aid application is correct; and~~

16 ~~—(3) Child support received by submitting to it—~~

17 ~~—(i) A statement signed by the applicant and one of the applicant's parents in the case of a~~  
18 ~~dependent student, or by the applicant in the case of an independent student, certifying the~~  
19 ~~amount of child support received; and~~

20 ~~—(ii) If the institution has reason to believe that the information provided is inaccurate, the~~  
21 ~~applicant must verify the amount of child support received by providing a document such as—~~

22 ~~—(A) a copy of the separation agreement or divorce decree showing the amount of child support~~  
23 ~~to be provided;~~

24 ~~—(B) A statement from the parent providing the child support showing the amount provided; or~~

25 ~~—(C) Copies of the child support checks or money order receipts.~~

26 (d) If an applicant is selected to verify other information specified in the annual  
27 Federal Register notice, the applicant must provide the documentation specified in that Federal  
28 Register notice.

29  
30 §668.58 Interim disbursements.

31

1 (a)(1) If an institution has reason to believe that the information included on the application is  
2 inaccurate, until the applicant verifies or corrects the information included on his or her  
3 application, the institution may not--

4 (i) Disburse any Federal Pell Grant, ~~ACG, National SMART Grant, or campus-based FSEOG~~  
5 ~~or Federal Perkins Loan~~ program funds to the applicant;

6 (ii) Employ the applicant in its ~~FWS~~~~Federal Work-Study~~ Program;

7 (iii) Certify the applicant's Federal Stafford Loan application or ~~process-disburse~~ Federal  
8 Stafford Loan proceeds for any previously certified Federal Stafford Loan application; ~~or~~

9 ~~(iv) Originate the applicant's Federal Direct Stafford Loan application or disburse Federal~~  
10 ~~Direct Stafford Loan proceeds for any previously originated Federal Direct Stafford Loan; or~~

11 (2) If an institution does not have reason to believe that the information included on an  
12 application is inaccurate prior to verification, the institution--

13 (i) May withhold payment of Federal Pell Grant, ~~ACG, National SMART Grant, or campus-~~  
14 ~~based FSEOG or Federal Perkins Loan~~ funds; or

15 (ii)(A) May make one disbursement ~~efrom each of the any combination of~~ Federal Pell Grant,  
16 ~~ACG, National SMART Grant,~~ Federal Perkins Loan, ~~or FSEOG~~ ~~or Federal Direct Stafford Loan~~  
17 ~~programs~~~~funds~~ for the applicant's first payment period; and

18 (B) May employ or allow an employer to employ an eligible student under the ~~FWS~~~~Federal~~  
19 ~~Work-Study~~ Program for the first 60 consecutive days after the student's enrollment in that  
20 award year; and

21 (iii)(A) May withhold certification of the applicant's Federal Stafford Loan application ~~or~~  
22 ~~origination of the applicant's Direct Subsidized Loan~~; or

23 (B) May certify the Federal Stafford Loan application or originate the ~~Federal Direct~~ ~~Stafford~~  
24 ~~Subsidized~~ Loan ~~provided that the institution does not deliver Federal Stafford Loan proceeds or~~  
25 ~~disburse Direct Subsidized Loan proceeds.~~

26 (b) If an institution chooses to make disbursement under paragraph (a)(2)(ii)(A) or (B) of this  
27 section, it is liable for any overpayment discovered ~~that as a results from of the~~ verification  
28 ~~process~~ to the extent that the overpayment is not recovered from the student.

29 (e) ~~An institution may not withhold any Federal Stafford Loan or Direct Loan proceeds from a~~  
30 ~~student under paragraph (a)(2) of this section for more than 45 days. If the applicant does not~~

1 complete the verification process within the 45 day period, the institution shall return the  
2 proceeds to the lender.

3 ~~—(d)(1) If the institution receives Federal Stafford Loan or Direct Loan proceeds in an amount  
4 which exceeds the student's need for the loan based upon the verified information and the excess  
5 funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the  
6 institution shall process the proceeds and advise the lender to reduce the subsequent  
7 disbursements.~~

8 ~~—(2) If the institution receives Federal Stafford Loan or Direct Loan proceeds in an amount  
9 which exceed the student's need for the loan based upon the verified information and the excess  
10 funds cannot be eliminated in subsequent disbursements for the applicable loan period, the  
11 institution shall return the excess proceeds to the lender.~~

12  
13 §668.59 Consequences of a change in application information.

14  
15 (a) For the subsidized student financial assistance ~~Federal Pell Grant, ACG, and National~~  
16 ~~SMART Grant~~ programs, —

17 ~~(1) Except as provided in paragraph (a)(2) of this section, if the information on an application  
18 changes as a result of the verification process, the institution shall make the changes or require  
19 the applicant to resubmit his or her application information to the Secretary for corrections. ~~if—~~~~

20 ~~—(i) The institution recalculates the applicant's EFC, determines that the applicant's EFC  
21 changes, and determines that the change in the EFC changes the applicant's Federal Pell Grant  
22 , ACG, or National SMART Grant award; or~~

23 ~~—(ii) The institution does not recalculate the applicant's EFC.~~

24 ~~(2) An institution need not require an applicant to resubmit his or her application information  
25 to the Secretary, recalculate an applicant's EFC, or adjust an applicant's Federal Pell Grant  
26 , ACG, or National SMART Grant award if, as a result of the verification process, the institution  
27 finds—~~

28 ~~—(i) No errors in nondollar items used to calculate the applicant's EFC;~~

29 ~~—(ii) No dollar amount in excess of \$400 as calculated by the net difference between the  
30 corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and  
31 the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes~~

1 | ~~paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu~~  
2 | ~~of Adjusted Gross Income (AGI).~~

3 | ~~—(b) For the Federal Pell Grant, ACG, and National SMART Grant Pprograms—~~

4 | ~~(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraph~~  
5 | ~~(a)(2) of this section, the institution shall calculate and disburse the applicant's Federal Pell~~  
6 | ~~Grant, ACG, or National SMART Grant award on the basis of the applicant's original EFC.~~

7 | ~~—(2)(i) Except as provided under paragraph (b)(2)(ii) of this~~  
8 | ~~section, if an institution recalculates an applicant's EFC because of a change in application~~  
9 | ~~information resulting from the verification process, the institution shall—~~

10 | ~~—(A) Require the applicant to resubmit his or her application to the Secretary;~~

11 | ~~—(B) Recalculate the applicant's Federal Pell Grant, ACG, or National SMART Grant award on~~  
12 | ~~the basis of the EFC on the corrected SAR or ISIR; and~~

13 | ~~—(C) Disburse any additional funds under that award only if the applicant provides the~~  
14 | ~~institution with the corrected SAR or ISIR and only to the extent that additional funds are~~  
15 | ~~payable based on the recalculation.~~

16 | ~~—(ii) If an institution recalculates an applicant's EFC because of a change in application~~  
17 | ~~information resulting from the verification process and determines that the change in the EFC~~  
18 | ~~increases the applicant's award, the institution—~~

19 | ~~—(A) May disburse the applicant's Federal Pell, ACG, or National SMART Grant Grant award~~  
20 | ~~on the basis of the original EFC without requiring the applicant to resubmit his or her application~~  
21 | ~~information to the Secretary; and~~

22 | ~~—(B) Except as provided in §668.60(b), shall disburse any~~  
23 | ~~additional funds under the increased award reflecting the new EFC if the institution receives the~~  
24 | ~~corrected SAR or ISIR.~~

25 | ~~(db)~~(1) If the institution selects an applicant for verification for an award year who previously  
26 | received a Federal Direct Subsidized Loan for that award year, and as a result of verification the  
27 | loan amount is reduced, the institution shall comply with the procedures specified in  
28 | §668.61(b)(2).

29 | (2) If the institution selects an applicant for verification for an award year who previously  
30 | received a loan under the Federal Stafford Loan Program for that award year, and as a result of

1 verification the loan amount is reduced, the institution shall comply with the procedures for  
2 notifying the borrower and lender specified in §668.61(b) and §682.604(h).

3 ~~(ec)~~ If the applicant has received funds based on information which may be incorrect and the  
4 institution has made a reasonable effort to resolve the alleged discrepancy, but cannot do so, the  
5 institution shall forward the applicant's name, social security number, and other relevant  
6 information to the Secretary.

7  
8 §668.60 Deadlines for submitting documentation and the consequences of failing to provide  
9 documentation.

10  
11 (a) An institution shall require an applicant selected for verification to submit to it, within the  
12 period of time it or the Secretary specifies, the document~~ations~~ set forth in §668.57 that are  
13 requested by the institution or the Secretary.

14 (b) For purposes of the Subsidized student financial assistance programs, excluding the  
15 Federal Pell Grant Program ~~campus-based, Federal Stafford Loan, Federal Direct Stafford/Ford~~  
16 ~~Loan programs--~~

17 (1) If an applicant fails to provide the requested documentation within a reasonable time  
18 period established by the institution or by the Secretary--

19 (i) The institution may not--

20 (A) Disburse any additional Federal Perkins Loan; ~~or~~ FSEOG ~~or~~ funds to the applicant;

21 (B) Continue to employ or allow an employer to employ the applicant under FWS;

22 (C) Certify the applicant's Federal Stafford Loan application or originate the applicant's  
23 Federal Direct Subsidized Loan; or

24 (D) ~~Process~~ Disburse any additional Federal Stafford Loan or Federal Direct Subsidized Loan  
25 ~~Direct Loan~~ proceeds for the applicant;

26 ~~(ii) The institution shall return to the lender, or to the Secretary, in the case of a Direct~~  
27 ~~Subsidized Loan, any Federal Stafford Loan or Direct Subsidized Loan proceeds that otherwise~~  
28 ~~would be payable to the applicant; and~~

29 (iii) The applicant shall repay to the institution any Federal Perkins Loan, FSEOG, or  
30 payments received for that award year;

1 (2) If the applicant provides the requested documentation after the time period established by  
2 the institution, the institution may, at its option, award aid to the applicant notwithstanding  
3 paragraph (b)(1)(i) of this section, ~~and~~

4 ~~(3) An institution may not withhold any Federal Stafford Loan proceeds from an applicant~~  
5 ~~under paragraph (b)(1)(i)(D) of this section for more than 45 days. If the applicant does not~~  
6 ~~complete verification within the 45-day period, the institution shall return the Federal Stafford~~  
7 ~~Loan proceeds to the lender.~~

8 (c) For purposes of the Federal Pell Grant, ~~ACG, and National SMART Grant~~ Pprograms--

9 (1) An applicant may submit a verified SAR to the institution or the institution may receive a  
10 verified ISIR after the applicable deadline specified in 34 CFR 690.61 ~~and 691.61~~ but within an  
11 established additional time period set by the Secretary through publication of a notice in the  
12 Federal Register. ~~If the institution receives a verified SAR or ISIR during the established~~  
13 ~~additional time period, and the EFC on the two SARs or ISIRs are different, payment must be~~  
14 ~~based on the higher of the two EFCs.~~

15 (2) If the applicant does not provide to the institution the requested documentation and, if  
16 necessary, a verified SAR or the institution does not receive a verified ISIR, within the additional  
17 time period referenced in paragraph (c)(1) of this section, the applicant--

18 (i) Forfeits the Federal Pell Grant, ~~ACG, or National SMART Grant~~ for the award year; and

19 (ii) Shall return any Federal Pell Grant, ~~ACG, or National SMART Grant~~ payments previously  
20 received for that award year to the Secretary.

21 ~~(d) The Secretary may determine not to process any subsequent application for Federal Pell~~  
22 ~~Grant, ACG, or National SMART Grant~~ Pprogram assistance, and an institution, if directed by  
23 the Secretary, may not process any subsequent application for campus-based FSEOG, FWS,  
24 Federal Perkins Loan, Federal Direct Stafford/Ford Loan, or Federal Stafford Loan program  
25 ~~assistance of an applicant who has been requested to provide documentation until the applicant~~  
26 ~~provides the documentation or the Secretary decides that there is no longer a need for the~~  
27 ~~documentation.~~

28 (ed) If an applicant selected for verification for an award year dies before the deadline for  
29 completing the verification process without completing that process, ~~and the deadline is in the~~  
30 ~~subsequent award year,~~ the institution may not--

31 (1) Make any further disbursements on behalf of that applicant;

1 (2) Certify that applicant's Federal Stafford Loan application, originate that applicant's Federal  
2 Direct Subsidized Loan, or ~~process-disburse~~ that applicant's Federal Stafford Loan or Federal  
3 Direct Subsidized Loan proceeds; or

4 (3) Consider any funds it disbursed to that applicant under §668.58(a)(2) as an overpayment.

5  
6 §668.61 Recovery of funds.

7  
8 (a) If an institution discovers, as a result of the verification process, that an applicant received  
9 under §668.58(a)(2)(ii)(A) more financial aid than the applicant was eligible to receive, the  
10 institution shall eliminate the overpayment by--

11 (1) Adjusting subsequent financial aid payments in the award year in which the overpayment  
12 occurred; or

13 (2) Reimbursing the appropriate program account by--

14 (i) Requiring the applicant to return the overpayment to the  
15 institution if the institution cannot correct the overpayment under paragraph (a)(1) of this  
16 section; or

17 (ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant  
18 does not return the overpayment:

19 (A) Sixty days after the applicant's last day of attendance.

20 (B) The last day of the award year in which the institution  
21 disbursed Federal Pell Grant, ~~ACG, National SMART Grant,~~ Federal Perkins Loan, or FSEOG  
22 funds to the applicant.

23 (b)

24 ~~(1) If the institution determines as a result of the verification process that an applicant received~~  
25 ~~Stafford Loan or proceeds for an award year in excess of the student's financial need for the loan,~~  
26 ~~the institution shall withhold and promptly return to the lender or escrow agent any disbursement~~  
27 ~~not yet delivered to the student that exceeds the amount of assistance for which the student is~~  
28 ~~eligible, taking into account other financial aid received by the student. However, instead of~~  
29 ~~returning the entire undelivered disbursement, the school may choose to return promptly to the~~  
30 ~~lender only the portion of the disbursement for which the student is ineligible. In either case, the~~

1 | ~~institution shall provide the lender with a written statement describing the reason for the returned~~  
2 | ~~loan funds.~~

3 | ~~(2)~~ If the institution determines as a result of the verification process that a student received  
4 | Federal Direct Subsidized Loan proceeds for an award year in excess of the student's need for the  
5 | loan, the institution shall reduce or cancel one or more subsequent disbursements to eliminate the  
6 | amount in excess of the student's need.

## Issue Paper #10

### Team I – Program Integrity Issues

**Issue:** Satisfactory Academic Progress

**Statutory cites:** HEA sections 484(a)(2), 484(c)

**Regulatory cites:** 34 CFR 668.16(e), 668.32(f), and 668.34

**Summary question(s):** Should we modify and strengthen the satisfactory academic progress (SAP) regulations to ensure that students who are receiving Title IV aid are truly progressing in their academic program in a reasonable time period?

**Summary of issue:** To be eligible for Federal financial aid, a student must make satisfactory academic progress, and the school must have a published policy for monitoring that progress. A SAP policy is considered reasonable if it contains both qualitative (grade-based) and quantitative (time-related) standards. It must apply the policy consistently to all educational programs and to all students within categories e.g., full-time, part-time, undergraduate, and graduate students. The policy must be at least as strict as the school's standard for students enrolled in the same educational program who are not receiving Title IV aid. It must provide for schools to check qualitative and quantitative components of the standards at the end of increments that cannot be longer than half the program or one academic year, whichever is less. Increments generally coincide with payment periods. The policy must provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress. This is not to say that a school must provide for appeals; a school's policy may be that it does not entertain appeals. The policy must also provide specific procedures for a student to re-establish that the student is making satisfactory progress. Review of institutional policies shows that an institution can have a policy that meets all of our criteria, but due to automatic probationary periods, a student may receive aid for as long as 24 months without further review of his progress.

#### Comments and questions

Effect of retaking courses on meeting qualitative standards. Under current regulations, the school's written policy must explain how it handles course repetitions, such as whether only the highest or most recent grade counts. While the school can exclude grades for prior attempts (repeat/delete) when calculating a student's GPA, the school must include the credits from all attempts when assessing if the student meets the quantitative SAP standard. Should this provision be reconsidered? Should students be permitted to use title IV funds to retake courses to get a better grade?

Increments. Some schools monitor SAP on an annual basis. Many of the individuals who provided public comments on SAP recommended that regulations governing SAP be changed to require SAP reviews more frequently than once each year.

Cumulative completion and GPA requirements. We need to make it clear that the standards must lead to successful completion of the program in the timeframe.

Requiring a “C” average of all students. The only reference to a “C” average in regulations is in §668.34(c). The requirement currently applies only to students enrolled in programs of two years or longer. If there is a change made in the frequency of SAP review, should this provision be revisited as well?

Probationary periods. The current regulations do not require a school’s SAP policy to specify if and how probationary periods will be accommodated. As a result, some students are permitted to remain on probation continuously even if their cumulative GPA and/or completion rate does not meet standards. One question for consideration is whether to add some specificity to the regulations regarding probationary periods.

Appeals. Under current regulations, a school enrolled in programs of less than two years may have an appeal process under which an appeal is granted for any reason as long as the student completed the process. Should §668.16(e) be amended to require schools’ appeal policies comport with §668.34(c)?

Graduate programs. The current regulations are written primarily for undergraduate programs. What changes are needed to ensure that SAP standards for graduate programs are sufficient?

**Updated information since November meeting:**

The Department felt that it would be helpful to start with some definitions for terms to be used in constructing new regulations for Satisfactory Academic progress. The following are intended to start that discussion.

1 **Draft definitions**

2 **Qualitative Component:** Consists of grades, work projects completed, or comparable  
3 factors that are measurable against a norm.

4 For programs longer than two academic years in length, the qualitative component must  
5 also provide that a student must have a grade point average of at least a “C” or its  
6 equivalent, or have academic standing consistent with the institution's requirements for  
7 graduation, at the end of the second year.

8 **Quantitative Component:** Consists of a maximum timeframe in which a student must  
9 complete his or her educational program.

10 **Maximum Timeframe:** For an undergraduate program, is no longer than 150 percent of  
11 the published length of the educational program.

12 For a graduate program, is defined by the institution in accordance with the length of the  
13 academic program.

14 **Increments:** A discrete period of time, not to exceed the lesser of one academic year or  
15 one-half the published length of the educational program whichever is shorter, that is  
16 used to monitor the student’s progression towards completion of the program. Each  
17 increment must include a schedule, established by the institution, which designates the  
18 minimum percentage or amount of work that a student must successfully complete in that  
19 increment in order to complete his or her educational program within the maximum  
20 timeframe.

21 **Warning Period:** A period during which a student may continue to receive Title IV  
22 funds despite not making satisfactory progress. A warning period may be applied when  
23 the increment reviewed is shorter than the regulatory minimum.

24 **Appeal:** The process by which a student who is determined not to meet the institution’s  
25 standards, petitions the institution for reconsideration. A student must submit  
26 information regarding why the student failed to maintain satisfactory academic progress,

1 and what has changed in the student's situation that will allow the student to demonstrate  
2 satisfactory progress at the end of the next increment. The student may appeal based  
3 upon the death of a relative, an injury or illness of the student, or other special  
4 circumstances.

5 **Probationary Period:** A period during which a student who has successfully appealed  
6 and has had eligibility for aid reinstated receives aid under special terms and conditions.  
7 A probationary period allows the student to prove the ability to be academically  
8 successful while receiving Title IV funds. At the end of the probationary period, the  
9 student must be meeting the satisfactory academic progress standards.

## Issue Paper #11

### Team I – Program Integrity Issues

**Issue:** Retaking Coursework

**Statutory cites:** N/A

**Regulatory cites:** §668.4(f)

**Summary of issue:** There are no program regulations that specifically govern retaking coursework but the Department is examining inconsistencies in this area as they relate to the treatment of students who are enrolled in certain clock-hour or nonterm credit-hour programs. The provisions of the payment period definition in §668.4(f) relate to retaking coursework in a clock-hour or nonterm credit-hour program in the case of readmissions and transfer students.

Students in term-based credit-hour programs may retake courses that they fail and get paid for retaking those courses as long as:

- The credits are in addition to, not as a replacement for previously earned credits, e.g., repeating a failed course, and
- The students meet the institution’s overall satisfactory academic progress standards.

Students in other programs (e.g., clock-hour programs and nonterm credit-hour programs) generally must successfully complete (i.e., pass) the coursework for which they are paid before becoming eligible for a subsequent payment. Students are generally not allowed to be paid for retaking courses that they have already passed – for example for retaking courses for which they have received a passing grade, but for which they wish to retake to get a higher grade. Under the payment period definition, in some instances, a student may be paid for repeating coursework.

Although students cannot be paid to retake part of a clock-hour or nonterm credit-hour program that they have already successfully completed, they are allowed to be paid for retaking an entire program that has already been successfully completed. This circumstance might occur when a student needs to retake an entire program after having been out of the field for a number of years during which the knowledge base of the program has changed. However, we have not established any minimum length of time that must transpire between the completion of the program and the retaking of the program.

**Comments and questions:** Should the Department harmonize the treatment for retaking coursework between term-based credit hour programs and other programs? If so, we should consider not paying for repeating coursework for any program. This approach may affect the payment period definition. As an alternative, we could codify current guidance.

Should the Department require schools to assess a student before the student is allowed to repeat coursework after an extended absence?

How should the Department treat a student enrolled in a term-based program that is treated as a nonterm program for purposes of FFEL and Direct Loans?

What is the impact on nonterm programs of the reenrollment requirements for clock-hour and nonterm credit-hour programs in the payment period definition?

1 **Draft Regulatory Language:**

2  
3 Section 668.2 General Definitions

4  
5 Full-time student: An enrolled student who is carrying a full-time academic workload, as  
6 determined by the institution, under a standard applicable to all students enrolled in a particular  
7 educational program. The student's workload may include any combination of courses, work,  
8 research, or special studies that the institution considers sufficient to classify the student as a full-  
9 time student, [including for a term-based program, repeating any coursework previously taken in](#)  
10 [the program](#). However, for an undergraduate student, an institution's minimum standard must  
11 equal or exceed one of the following minimum requirements:

12 (1) For a program that measures progress in credit hours and uses standard terms  
13 (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

14 (2) For a program that measures progress in credit hours and does not use terms, 24  
15 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or  
16 the prorated equivalent if the program is less than one academic year.

17 (3) For a program that measures progress in credit hours and uses nonstandard terms  
18 (terms other than semesters, trimesters or quarters) the number of credits determined by--

19 (i) Dividing the number of weeks of instructional time in the term by the number of  
20 weeks of instructional time in the program's academic year; and

21 (ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the  
22 number of credit hours in the program's academic year.

23 (4) For a program that measures progress in clock hours, 24 clock hours per week.

24 (5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a  
25 maximum of 18 weeks.

1           (6) The work portion of a cooperative education program in which the amount of work  
2 performed is equivalent to the academic workload of a full-time student.

3           (7) For correspondence coursework, a full-time courseload must be--

4           (i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of  
5 this definition; and

6           (ii) At least one-half of the coursework must be made up of non-correspondence  
7 coursework that meets one-half of the institution's requirement for full-time students.

## Issue Paper #12

### **Team I – Program Integrity Issues**

**Issue:** Return of title IV: Term-based programs with modules or compressed courses

**Statutory cites:** None

**Regulatory cites:** The regulations do not specifically address the treatment of term-based module programs under the return of title IV Funds calculation. However, Dear Colleague Letter Gen-00-24 addresses the issue of whether a student is considered to have withdrawn from a standard term-based module program for purposes of the return calculation in §668.22.

**Summary of issue:** Should we modify our policy that a student who completes only one module or compressed course, within in a term in which he or she is expected to continue attendance in additional coursework, is not considered to have withdrawn under the return calculation?

When a recipient of title IV aid withdraws from an institution, the institution must determine the amount of title IV aid that the student earned for the period the student has attended. For term-based programs, a student is paid aid for each term. The regulations address the institution’s and the student’s responsibilities when a student does not finish the term (i.e., withdraws from all courses in the term) and how much aid the student has earned for attendance for the part of the term attended prior to withdrawal. Typically in a term-based program, a student takes several courses concurrently throughout each term and, thus, can drop all courses but one and not be considered to have withdrawn from the term.

However, in some programs with modules or compressed coursework, courses are less than the length of the term. The courses may be taken in a consecutive fashion where each course is taken and completed in a module before a subsequent course is taken in a subsequent module or in overlapping timeframes. In some of these programs the institution will group several modules or courses together to make up a term. In these term-based programs with modules or compressed courses, we have established a policy that equates the completion of one course or module to the completion of one course taken over an entire term in a “traditional” term program where courses are taken concurrently over the span of the term. In other words, when a student is scheduled to take several courses in one of these programs and drops out before the term has ended (for example after 5 weeks of a 15 week term) but has completed one course, we have not traditionally viewed that student as having withdrawn from the term. Thus, while we require the school to recalculate the student’s enrollment status under §690.80(b)(2)(ii) for his or her Pell Grant payment when he or she does not begin courses in subsequent modules, we have not required that there be a return calculation for that student under §668.22 when the student has completed at least one course. We have viewed the completion of one course taken in a term-based program with courses offered as modules or compressed courses to be equivalent to completing one course in a “traditional” term-based program based on the fact that a student has completed the same amount of education in each instance in the term in which the student was enrolled. We have taken this position despite the fact that the student in the term-based module program may have attended only 5 weeks (or less) out of the 15- week term, while the student in the “traditional” term-based program has attended for the full 15 weeks of the term.

**Comments and questions:** For a number of reasons, we might want to reconsider this position. First, a student's aid for a term is based on, and intended to cover, in whole or in part, not only tuition and fees for the term, but the student's living expenses for the term. Second, a student in a module-based term who only attends one module and then ceases to be enrolled without attending other modules or courses he or she is expected to attend in the term really is withdrawing before the term is completed. And third, there is more than the potential for some abuse as a number of institutions have structured module-based term programs where the first module is very short, with perhaps only a one credit course taken in it.

The result of this policy is that a student who attends only a week or two of a 15-week term and then withdraws from the term can end up with a completed (one-credit) course for the term. This position then, under our current withdrawal policy, translates into a determination that the student has not withdrawn from the term, and allows the institution and/or student to keep aid intended for a 15-week period of time when (s)he has only attended school for as little as one week.

1 **Draft regulatory language**

2

3 ***§668.22 Treatment of title IV funds when a student withdraws.***

4 (a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an  
5 institution during a payment period or period of enrollment in which the recipient began  
6 attendance, the institution must determine the amount of title IV grant or loan assistance that the  
7 student earned as of the student's withdrawal date in accordance with paragraph (e) of this  
8 section.

9 (2) In a term-based, credit-hour program, a student is considered to have withdrawn from  
10 a term if--

11 (i) The student is enrolled in a term that includes courses within the term that are less  
12 than the length of the term and are taken consecutively or are taken in overlapping time periods  
13 within the term; and

14 | (ii) The student withdraws without completing the courses for which the student is  
15 | enrolled or expected to attend in the term, regardless of whether the student has completed any  
16 | courses.

17 | (~~23~~) For purposes of this section, “title IV grant or loan assistance” includes only  
18 | assistance from the Federal Perkins Loan, Direct Loan, FFEL, Federal Pell Grant, Academic  
19 | Competitiveness Grant, National SMART Grant, TEACH Grant, and FSEOG programs, not  
20 | including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching  
21 | share by the individual recipient method or the aggregate method.

22 | Note: The rest of paragraph (a) would need to be renumbered.

**Issue Paper #13**  
**Team I – Program Integrity Issues**

**Issue:** Return of Title IV: taking attendance

**Statutory cites:** HEA section 484B(c)(1)

**Regulatory cites:** §668.22(b) and (c)

**Summary question(s):** Are modifications needed to the requirements for return of title IV related to taking attendance?

**Summary of issue:** Generally, the HEA requires institutions and students to return unearned portions of title IV grant or loan assistance (other than funds received under the Federal Work-Study Program) when a student withdraws during a payment period or period of enrollment. The statute defines the term “the day the student withdrew” to be the date the institution determines:

- (A)(i) The student began the withdrawal process prescribed by the institution;
  - (ii) The student otherwise provided official notification to the institution of the intent to withdraw; or
  - (iii) In the case of a student who does not begin the withdrawal process or otherwise notify the institution of the intent to withdraw, the date that is the mid-point of the payment period for which assistance under this title was disbursed or a later date documented by the institution; or
- (B) For institutions required to take attendance, is determined by the institution from such attendance records.

The regulations further specify the distinction between (1) the withdrawal date for a student attending an institution that is *required* to take attendance and (2) the withdrawal date of a student attending an institution that is *not required* to take attendance.

Under the current regulations, an institution is required to take attendance if an outside entity, such as the institution’s accrediting agency or a State agency, requires that the institution take attendance. If this is the case, the student’s withdrawal date is the last date of academic attendance, as determined by the institution from its attendance records.

By contrast, at institutions not required to take attendance, the student’s withdrawal date may be:

- The date, as determined by the institution, that the student began the institutionally prescribed withdrawal process;
- The date, as determined by the institution, that the student otherwise provided official notification to the institution of his or her intent to withdraw;
- If the student failed to provide official notification to the institution of an intent to withdraw, the mid-point of the payment period of period of enrollment;
- If a circumstance beyond the student’s control (such as an illness or accident) precludes a student or an individual acting on the student’s behalf from initiating the institution’s

withdrawal process or otherwise providing official notification of the student's intent to withdraw, the date, as determined by the institution, that is related to that circumstance;

- If the student does not return from an approved leave of absence, the date, as determined by the institution, that the student began the leave of absence; or
- If the student takes a leave of absence that does not meet the requirements of §668.22(d), the date that the student began the leave of absence.

In lieu of any of the above, the institution may use the student's last date of attendance at an academically-related activity, if the institution documents both that the activity is academically related and the student's attendance at the activity.

**Comments and questions:** The withdrawal date for institutions that are not required to take attendance can be much less precise than the withdrawal date at an institution that is required to take attendance, potentially leading to an abuse of Federal funds. For example, at an institution that is not required to take attendance, for a student who withdraws without providing notification, the withdrawal date may be assumed to be the 50% point, even if the institution has attendance records and knows exactly when the student last attended. Thus, a student could earn 50% of his or her aid when the school knows that there was only one day of attendance. It would be more equitable to require schools that have attendance records to use them, rather than allowing institutions to choose a different date, despite having these records. Pursuant to the statute, we cannot require the school to use its attendance records if it is not "required to take attendance." However, we can remove from the regulations the provision that an institution must take attendance only if it is required to by an outside entity.

1

**Draft regulatory language**

2

**§668.22 Treatment of title IV funds when a student withdraws.**

3

(b) *Withdrawal date for a student who withdraws from an institution that is required to*

4

*take attendance.* (1) For purposes of this section, for a student who ceases attendance at an

5

institution that is required to take attendance, including a student who does not return from an

6

approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a

7

leave of absence that does not meet the requirements of paragraph (d) of this section, the

8

student's withdrawal date is the last date of academic attendance as determined by the institution

9

from its attendance records.

10 (2) An institution must document a student's withdrawal date determined in accordance  
11 with paragraph (b)(1) of this section and maintain the documentation as of the date of the  
12 institution's determination that the student withdrew, as defined in paragraph (1)(3) of this  
13 section.

14 (3)(i) An institution is required to take attendance if--

15 (A) ~~an~~ An outside entity (such as the institution's accrediting agency or a State agency)  
16 has a requirement, ~~as determined by the entity,~~ that the institution take attendance-;

17 (B) The institution itself has a requirement that its instructors take attendance; or

18 (C) The institution or an outside entity has a requirement, including but not limited to,  
19 requiring that students in a program demonstrate attendance in the classes of that program, or a  
20 portion of that program, and compliance with that requirement can only be determined by taking  
21 of attendance or a comparable process.

22 (ii) If ~~an outside entity requires an~~there is a determination that an institution is required to  
23 take attendance in accordance with paragraph (b) (3)(i) of this section -for only some students,  
24 the institution must use its attendance records to determine a withdrawal date in accordance with  
25 paragraph (b)(1) of this section for those students.

## Issue Paper #14

### Team I – Program Integrity Issues

<b>Issue:</b>	Disbursements of Title IV funds
<b>Statutory cites:</b>	HEA sections: 401(a); 420M(b); 428G; 452(c)
<b>Regulatory cites:</b>	§668.164; §668.165; §685.301(e); §686.37(b); §690.76

**Summary of issue:** Should we establish disbursement procedures that limit how long an institution may delay disbursing Federal Pell Grant funds?

Should we revise the disbursement reporting requirements of the Direct Loan and TEACH Grant programs?

#### Delayed Federal Pell Grant disbursements

Although the regulations permit an institution to disburse Federal Pell Grant funds in a manner that best meets the needs of the student, we have identified situations where institutions delay disbursing funds for an extended time (some wait until the student has earned all the Federal Pell Grant funds for the payment period), make partial disbursements that cover specific costs, or condition the timely receipt of funds. In these instances, because students do not have the benefit of those funds in a timely manner, they may have to pay for educational costs with loans or personal funds that would otherwise be paid by Federal Pell Grant funds, or do without needed items (for example, books and supplies) or services until the institution makes the funds available. The delay in disbursing Federal Pell Grant funds has resulted in students withdrawing, receiving only loans after the calculation of the return of title IV, and not being eligible for any postwithdrawal disbursement of their Federal Pell Grants. These practices do not comport with either the intent of the program or with the intent of the regulations that allow an institution to budget a student's funds to best meet the needs of the student.

#### COD reporting requirement

The Direct Loan and TEACH Grant regulations currently require institutions to submit a record to the Common Origination and Disbursement system (COD) no later than 30 days after making a disbursement, adjustment, or cancellation of a Direct Loan or TEACH Grant. We could replace this requirement with a provision to publish the COD reporting requirements in a Federal Register notice. Changing this provision would bring the Direct Loan and TEACH Grant programs in line with the other title IV programs that report student-level disbursement data. This change would give the Department administrative flexibility in adjusting the reporting requirements to take advantage of changing technology and to improve funds management.

#### **Comments and questions**

#### Delayed Federal Pell Grant disbursements

- Should the regulations provide that an initial Federal Pell Grant disbursement to an eligible student must be made no later than the first week of a term or payment period? For, example, the initial disbursement amount could be, at a minimum, the amount of the allowance

included in the student's cost of attendance for books and supplies. Subsequently, the remaining funds could be paid no later than, for example, the end of the drop/add period for all students in a term-based program with a drop/add period no greater than 14 calendar days after the start of classes or 14 calendar days after the start of classes for other programs including clock-hour or nonterm credit-hour programs.

- Should the regulations establish time points during a payment period where a minimum or pro rata portion of a Federal Pell Grant must be paid to a student? For example, an institution could be required to pay not less than one-third of the Federal Pell Grant funds at the beginning of a payment period, one-third no later than the end of the first 25 percent of the calendar time of the payment period, and the remaining third no later than the 50 percent of the calendar time in the payment period.

- Should the regulations provide that an institution must disburse all of the title IV funds a student is eligible to receive at or before the beginning of a payment period? Of course, this requirement would not include disbursements that the student is not yet eligible to receive.

#### COD reporting requirement

Should the Direct Loan and TEACH Grant programs be subject to the same requirements as other title IV programs reporting student-level data?

#### Draft Language

1 ***§668.164 Disbursing funds.***

2 \* \* \*

3 (b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this  
4 section, an institution must disburse title IV, HEA program funds on a payment period basis. ~~An~~  
5 The institution must disburse all of the title IV, HEA program funds that a student or parent is  
6 eligible to receive for a payment period on or before the first day of class of the payment period  
7 ~~once each payment period~~ unless—

8 (i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3)  
9 applies;

10 (ii) For Federal Perkins Loan, FSEOG, Federal Pell Grant, TEACH, ACG, and National  
11 SMART Grant funds, ~~an the~~ institution ~~chooses to~~ makes multiple more than one disbursements  
12 ~~in each payment period in accordance with 34 CFR 674.16(b)(3), 34 CFR 676.16(a)(3), 34 CFR~~

1 ~~690.76, or 34 CFR 691.76, as applicable~~ during the payment period. The initial disbursement  
2 must be a direct payment to the student for at least the amount needed by the student to pay for  
3 books and supplies; or

4 (iii) Other program regulations allow or require otherwise.

5 (2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of  
6 FWS Program funds.

7 (3) Except as provided in paragraph (g) of this section, an institution may disburse title  
8 IV, HEA program funds to a student or parent for a payment period only if the student is enrolled  
9 for classes for that payment period and is eligible to receive those funds.

10 Note: the provision allowing an institution to disburse funds in a manner that best meet the  
11 needs of the student would be eliminated from the campus-based, Pell Grant, and TEACH  
12 program regulations.

13 ***§685.301 Origination of a loan by a Direct Loan Program school.***

14 \* \* \*

15 (e) *Reporting to the Secretary.* ~~(1) The Secretary accepts a student's Payment Data that is~~  
16 submitted in accordance with procedures established through publication in the Federal  
17 Register, and that contains information the Secretary considers to be accurate in light of other  
18 available information including that previously provided by the student and the institution. ~~A~~  
19 ~~school that participates under school origination option 2 must submit the promissory note, loan~~  
20 ~~origination record, and initial disbursement record for a loan to the Secretary no later than 30~~

1 ~~days following the date of the initial disbursement. The school must submit subsequent~~  
2 ~~disbursement records, including adjustment and cancellation records, to the Secretary no later~~  
3 ~~than 30 days following the date the disbursement, adjustment, or cancellation is made.~~

4 (2) ~~A school that participates under school origination option 1 or standard origination~~  
5 ~~must submit the initial disbursement record for a loan to the Secretary no later than 30 days~~  
6 ~~following the date of the initial disbursement. The school must submit subsequent disbursement~~  
7 ~~records, including adjustment and cancellation records, to the Secretary no later than 30 days~~  
8 ~~following the date the disbursement, adjustment, or cancellation is made.~~

9 (Approved by the Office of Management and Budget under control number 1845–0021)

10 (Authority: 20 U.S.C. 1087a *et seq.* )

11 **§ 686.37 Institutional reporting requirements.**

12 (a) An institution must provide to the Secretary information about each TEACH Grant  
13 recipient that includes but is not limited to—

14 (1) The student's eligibility for a TEACH Grant, as determined in accordance with  
15 §§686.11 and 686.31;

16 (2) The student's TEACH Grant amounts; and

17 (3) The anticipated and actual disbursement date or dates and disbursement amounts of  
18 the TEACH Grant funds.

1 (b) The Secretary accepts a student's Payment Data that is submitted in accordance with  
2 procedures established through publication in the Federal Register ,and that contains information  
3 the Secretary considers to be accurate in light of other available information including that  
4 previously provided by the student and the institution.~~An institution must submit the initial~~  
5 ~~disbursement record for a TEACH Grant to the Secretary no later than 30 days following the date~~  
6 ~~of the initial disbursement. The institution must submit subsequent disbursement records,~~  
7 ~~including adjustment and cancellation records, to the Secretary no later than 30 days following~~  
8 ~~the date the disbursement, adjustment, or cancellation is made.~~

9 (Authority: 20 U.S.C. 1070g, *et seq.* )