

**Issue Paper- Technical & Conforming Changes
March 12-15, 2018**

Issue: Technical & Conforming Changes/Miscellanea

Statutory cites: 20 U.S.C. 1001, 1002, 1003, 1071, et seq., 1078-2, 1082, 1088, 1091, 1092, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c)

Regulatory cites: 34 CFR §§ 600.2, 600.10, 600.20, 600.21, 668.6, 668.8 and 668.41

Summary: Summary of Changes Since Session 2: Since the second session, we propose amending the reporting and disclosure of information at §668.41 to (1) require schools that use pre-dispute arbitration agreements and/or class action waivers to disclose that information in an easily accessible format for students, prospective students, and the public, and (2) require these schools to provide an annual notification of this information to enrolled students. This is an issue from Borrower Defense that we are currently tracking, as we are revising the same regulation.

Summary of Changes Provided Before Session 2: Technical and conforming changes based on proposed regulatory language, as well as those disclosure items in §668.41 pertinent to borrower defense and financial responsibility for consideration by this committee. For the reader's convenience, we have also included pertinent sections of the Department's regulations for which we are not proposing any changes.

PART 600--INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

§600.2 Definitions.

* * * * *

Recognized occupation: An occupation that is--

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at www.onetonline.org or its successor site; or

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

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1071, et seq., 1078-2, 1088, 1091, 1094, 1099b, 1099c, 1141;

26 U.S.C. 501(c))

~~3. Section 600.10 is amended by:~~

~~A. Revising paragraphs (c)(1), (c)(2), and (c)(3)(i).~~

~~B. Revising the authority citation at the end of the section.~~

The revisions read as follows:

§600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) Educational programs. (1) An eligible institution that seeks to establish the eligibility of an educational program must--

~~(i) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under §600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.414;~~

~~(ii)~~ Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval; ~~and~~

~~(iii)~~ For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; ~~and~~

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3), obtain the Secretary's approval.

(2) Except as provided under §600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1) of this section.

(3) * * *

(i) Fails to comply with the requirements in paragraph (c)(1) of this section; or

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1141)

~~4. Section 600.20 is amended by:~~

~~A. Revising the introductory text of paragraph (c)(1).~~

~~B. Revising the authority citation at the end of the section.~~

~~The revisions read as follows:~~

§600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

* * * * *

(c) * * *

(1) Add an educational program or a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under §600.21:

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1099c)

~~5. Section 600.21 is amended by:~~

~~A. Adding paragraph (a)(11).~~

~~B. Revising the authority citation at the end of the section.~~

~~The addition and revision read as follows:~~

§600.21 Updating application information.

(a) * * *

~~(11) For any gainful employment program under 34 CFR part 668, subpart Q—~~

~~(i) Establishing the eligibility or reestablishing the eligibility of the program;~~

~~(ii) Discontinuing the program's eligibility under 34 CFR 668.410;~~

~~(iii) Ceasing to provide the program for at least 12 consecutive months;~~

~~(iv) Losing program eligibility under §600.40;~~

~~(v) Changing thea program's name, CIP code, as defined in 34 CFR 668.402, or~~

credential level; or

~~(vi) Updating thea certification pursuant to §668.414(b).~~

§668.41 Reporting and disclosure of information.

* * * * *

~~(i) Financial protection disclosures—(1) General. An institution must deliver a disclosure to enrolled and prospective students in the form and manner described in paragraph (i)(3), (4), and (5) of this section, and post that disclosure to its Web site as described in paragraph (i)(6) of this section, within 30 days of notifying the Secretary under § 668.171(h) of the occurrence of a triggering event or events identified pursuant to paragraph (i)(2) of this section. The requirements in this paragraph (i) apply for the 12-month period following the date the institution~~

~~notifies the Secretary under § 668.171(h) of a triggering event or events identified under paragraph (i)(2).~~

~~(2) Triggering events. The Secretary will conduct consumer testing to inform the identification of events for which a disclosure is required. The Secretary will consumer test each of the events identified in § 668.171(e) through (g), as well as other events that result in an institution being required to provide financial protection to the Department, to determine which of these events are most meaningful to students in their educational decision-making. The Secretary will identify the triggering events for which a disclosure is required under paragraph (i)(1) in a document published in the Federal Register.~~

~~(3) Form of disclosure. The Secretary will conduct consumer testing to ensure the form of the disclosure is meaningful and helpful to students. The Secretary will specify the form and placement of the disclosure in a notice published in the Federal Register following the consumer testing.~~

~~(4) Delivery to enrolled students. An institution must deliver the disclosure required under this paragraph (i) to each enrolled student in writing by—~~

~~(i) Hand-delivering the disclosure as a separate document to the student individually or as part of a group presentation; or~~

~~(ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with the student about institutional matters; and~~

~~(B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.~~

~~(5) Delivery to prospective students. An institution must deliver the disclosure required under this paragraph (i) to a prospective student before that student enrolls, registers, or enters into a financial obligation with the institution by—~~

~~(i) Hand-delivering the disclosure as a separate document to the student individually, or as part of a group presentation; or~~

~~(ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with prospective students about institutional matters; and~~

~~(B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.~~

~~(6) Institutional Web site. An institution must prominently provide the disclosure required under this paragraph (i) in a simple and meaningful manner on the home page of the institution's Web site.~~

~~* * * * *~~

~~(Authority: 20 U.S.C. 1092, 1094, 1099e)~~

~~6. Section 668.71 is amended in paragraph (c), in the second sentence of the definition of “Misrepresentation”, by removing the word “deceive” and adding in its place the words “mislead under the circumstances” and by adding a fourth sentence.~~

~~* * * *~~

~~(h) Loan repayment warning for proprietary institutions — (1) *Calculation of loan repayment rate.* For each award year, the Secretary calculates a proprietary institution's loan repayment rate, for the cohort of borrowers who entered repayment on their FFEL or Direct Loans at any time during the two-year cohort period, using the methodology in §668.413(b)(3), provided that, for the purpose of this paragraph (h) —~~

~~(i) The reference to “program” in §668.413(b)(3)(vi) is read to refer to “institution”;~~

~~(ii) “Award year” means the 12-month period that begins on July 1 of one year and ends on June 30 of the following year;~~

~~(iii) “Borrower” means a student who received a FFEL or Direct Loan for enrolling in a gainful employment program at the institution; and~~

~~(iv) “Two-year cohort period” is defined as set forth in §668.402.~~

~~(2) *Issuing and appealing loan repayment rates.* (i) For each award year, the Secretary notifies an institution of its final loan repayment rate.~~

~~(ii) If an institution's final loan repayment rate shows that the median borrower has not either fully repaid all FFEL or Direct Loans received for enrollment in the institution or made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the institution —~~

~~(A) Using the calculation described in paragraph (h)(4)(ii) of this section, the institution may submit an appeal to the Secretary within 15 days of receiving notification of its final loan repayment rate; and~~

~~(B) The Secretary will notify the institution if the appeal is—~~

~~(1) Granted and the institution qualifies for an exemption from the warning requirement under paragraph (h)(4) of this section; or~~

~~(2) Not granted, and the institution must comply with the warning requirement under paragraph (h)(3) of this section.~~

~~(3) *Loan repayment warning—(i) Promotional materials.* (A) Except as provided in paragraph (h)(4) of this section, for any award year in which the institution's loan repayment rate shows that the median borrower has not either fully repaid, or made loan payments sufficient to reduce by at least one dollar the outstanding balance of, each of the borrower's FFEL or Direct Loans received for enrollment in the institution, the institution must, in all promotional materials that are made available to prospective or enrolled students by or on behalf of the institution, include a loan repayment warning in a form, place, and manner prescribed by the Secretary in a notice published in the Federal Register. The warning language must read: "U.S. Department of Education Warning: A majority of recent student loan borrowers at this school are not paying down their loans," unless stated otherwise by the Secretary in a notice published in the Federal Register. Before publishing that notice, the Secretary may conduct consumer testing to help ensure that the warning is meaningful and helpful to students.~~

~~(B) Promotional materials include, but are not limited to, an institution's Web site, catalogs, invitations, flyers, billboards, and advertising on or through radio, television, video, print media, social media, or the Internet.~~

~~(C) The institution must ensure that all promotional materials, including printed materials, about the institution are accurate and current at the time they are published, approved by a State agency, or broadcast.~~

~~(ii) *Clarity of warning.* The institution must ensure that the warning is prominent, clear, and conspicuous. The warning is not prominent, clear, and conspicuous if it is difficult to read or hear, or placed where it can be easily overlooked. In written materials, including email, Internet advertising and promotional materials, print media, and other advertising or hard-copy promotional materials, the warning must be included on the cover page or home page and any other pages with information on a program of study and any pages with information on costs and financial aid. For television and video materials, the warning must be both spoken and written simultaneously. The Secretary may require the institution to modify its promotional materials, including its Web site, if the warning is not prominent, clear, and conspicuous.~~

~~(4) *Exemptions.* An institution is not required to provide a warning under paragraph (h)(3) of this section based on a final loan repayment rate for that award year if—~~

~~(i) That rate is based on fewer than 10 borrowers in the cohort described in paragraph (h)(1) of this section; or~~

~~(ii) The institution demonstrates to the Secretary's satisfaction that not all of its programs constitute GE programs and that if the borrowers in the non-GE programs were included in the calculation of the loan repayment rate, the loan repayment rate would show that the median borrower has made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the institution.~~

(a) Definitions. The following definitions apply to this subpart:

* * * * *

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate level.

(b) Disclosure through Internet or Intranet websites. Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) Notice to enrolled students. (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g), and (h) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraphs s

(d), (e), or (g), or (h) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(d) General disclosures for enrolled or prospective students. An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to §668.42).

(2) The institution (pursuant to §668.43).

* * * * *

(h) Enrolled students, prospective students, and the public -- disclosure of an institution's use of pre-dispute arbitration agreements and/or class action waivers for students receiving Title IV Federal student aid. (1) An institution of higher education must make available to enrolled students, prospective students, and the public easily accessible information regarding any class action waiver or pre-dispute arbitration agreement that is included in any agreement between the institution and students receiving Title IV Federal student aid. The institution may not use an Intranet website for the purpose of providing this notice to prospective students or the public.

(2) The institution must provide an annual notice to all enrolled students, pursuant to paragraph (c)(1) of this section, of the information described in paragraph (h)(1). If the institution chooses to make the disclosure available by posting the disclosure on an Internet website or an Intranet website, such disclosure must include the exact electronic address at which the disclosure is posted, a brief description of the disclosure, and a statement that the institution will provide a paper copy of the disclosure upon request.

(3) For the purposes of this paragraph (h), the following definitions apply:

(i) *Class action* means a lawsuit or an arbitration proceeding in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23.

(ii) *Class action waiver* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student that prevents an individual from filing or participating in a class action.

(iii) *Pre-dispute arbitration agreement* means any agreement or part of an agreement, regardless of its form or structure, between a school, or a party acting on behalf of a school, and a student requiring arbitration of any future dispute between the parties.

(Authority: 20 U.S.C. 1092)

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(Authority: 20 U.S.C. 1094, 1099b)

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

~~6. The authority citation for part §668 continues to read as follows:~~

~~AUTHORITY: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.~~

~~7. Section 668.6 is amended by:~~

~~A. Removing and reserving paragraph (a).~~

~~B. Adding a new paragraph (d).~~

~~C. Revising the authority citation at the end of the section.~~

~~The addition and revision read as follows:~~

~~§668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.~~

~~* * * * *~~

~~(d) Sunset provisions. Institutions must comply with the requirements of this section through December 31, 2016.~~

~~(Authority: 20 U.S.C. 1001, 1002, 1088)~~

~~§668.7.6 [Removed and Reserved] .~~

~~8. Remove and reserve § 668.7.~~

~~* * * * *~~

~~§668.8 Eligible program.~~[Amended].~~~~

~~* * * * *~~

~~(d) * * *~~

(2) * * *

(iii) Provide training that prepares a student for gainful employment in a recognized occupation ~~as provided under subpart Q of this part~~; and

* * * * *

(3) * * *

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation ~~as provided under subpart Q of this part~~;

9. ~~Section 668.8 is amended by:~~

A. ~~In paragraph (d)(2)(iii), removing the reference to “§668.6” and adding, in its place, a reference to “subpart Q of this part”.~~

B. ~~In paragraph (d)(3)(iii), removing the reference to “§668.6” and adding, in its place, a reference to “subpart Q of this part”.~~

10. ~~Section 668.14 is amended by revising paragraph (a)(26) to read as follows:~~

§668.14 Program participation agreement.

(a) * * *

(26) ~~If an~~For any educational program offered by the institution ~~is required to prepare a student that prepares students~~ for ~~gainful~~ employment in a recognized occupation, if the State in which the institution is located or a Federal agency has established the minimum quantity of training required for students in that occupation, the institution must--

(i) Demonstrate a reasonable relationship between the length of the program and ~~entry level~~ requirements for the recognized occupation for which the program prepares the student.

The Secretary considers the relationship to be reasonable if the number of clock hours or equivalent instruction provided in the program does not exceed by more than 50 percent the

minimum number of clock hours or equivalent instruction required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; and

(ii) ~~Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and~~

~~(iii)~~ Provide ~~for that program the~~any certification required ~~in~~under §668.414.