

Proposed Revisions to Severability Language

Submitted by: Preston Cooper (Taxpayers and the Public Interest Constituency)

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Pursuant to a memo I submitted yesterday (“Proposal to Separate the Regulations for GE and Eligible Non-GE Programs”) and a conversation at the table today related to the severability language in the proposed regulations, I suggest the following language changes to proposed 34 CFR § 668.606.

Proposed Language (proposed additions in red):

§ 668.606 Severability.

If any provision of this subpart or its application to any person, act, ~~or~~ practice, **or program type (as defined in § 685.102(a))** is held invalid, the remainder of the part and this subpart, and the application of this subpart’s provisions to any other person, act, ~~or~~ practice, **or program type (as defined in § 685.102(a))** will not be affected thereby.

Please note that, in accordance with my prior memo, I continue to recommend the Department list the applicable accountability rules for GE programs in a separate section from the regulations governing accountability for eligible non-GE programs.

Additionally, in the preamble of the regulations, the Department should include a thorough discussion about how the frameworks of accountability for GE and eligible non-GE programs serve distinct purposes and can operate separately (including if any provision is held invalid later). This will help to avoid confusion and provide clarity about the authorities under which each category operates. Further, the Regulatory Impact Analysis of the rule should separately account for the costs and benefits of each framework, for each applicable subset of programs, as further demonstration of the independent operations of each framework.