

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

The NCAA guidance on how to verify a high school diploma

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.

Updated information since December 7-11, 2009 meeting:

The proposed language replaces the previous proposal (which set out a prescribed regulatory process for institutions to follow) with an operational solution, leaving open the possibility that if a closer look is warranted, the institution should make a reasonable inquiry to resolve the situation. There is no intention to create an across-the-board requirement to collect high school diplomas.

On the operational side, beginning with the 2011-2012 award year, a student completing the Free Application for Federal Student Aid will be required to list the name of the secondary school or entity that provides a secondary school program of study and the State that awarded his or her high school diploma. If the secondary school or entity the student provides does not match the list of secondary schools maintained by the Secretary or if the student does not provide the name of the secondary school or entity or the State that issued the diploma, the student's FAFSA may be selected for verification for further review by the institution to determine if the student has a valid high school diploma before the student can receive any Title IV aid.

In addition, the Secretary plans to provide guidance, in the Federal Student Aid Handbook or through other means, that an institution may use when evaluating the validity of a high school diploma for purposes of awarding aid under the Title IV, HEA programs.

1 **Draft Regulatory Language:**

2 **§668.16 Standards of administrative capability.**

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 (p) Develops and follows procedures to evaluate the validity of a student's high school
9 completion if the institution or the Secretary has reason to believe that the high school
10 diploma is not valid or was not obtained from an entity that provides secondary school
11 education.

Issue Paper #2

Team I – Program Integrity Issues

Issue:	Ability to Benefit
Statutory cites:	HEA section 484(d)
Regulatory cites:	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.

Updated information since December meeting

- In §668.32(e), added 6 trimester hours and 225 clock hours to the proposed language.
- Updated language regarding individuals with disabilities, and added new requirements for providing appropriate accommodations for individuals with disabilities, throughout subpart J.
- Revised language in §§668.141(a)(5).
- Added a definition of “test” and revised the definitions of “independent test administrator” and “test publisher”.
- Combined language for approval of tests submitted by States and test publishers (§§668.143 and 668.144).
- Added language to §668.145 providing that the Secretary may revoke approval of a test if a test were changed substantially and not resubmitted for approval.
- Removed the special provision in §668.149 that applies to students whose native language is not English, and for whom no tests are reasonably available.
- Added a requirement to §668.150 that students be notified of the decertification of a test administrator if the Secretary determines that the scores are invalid in connection with the decertification and revised the timeframe for test publishers and States to submit test score anomaly studies.
- Added a requirement to §668.150 that test publishers (and States) get and act on any notifications of decertification their test administrators have received from other publishers (or States).
- Added a requirement in §668.151 that tests given by an independent test administrator be kept at a secure location.
- Revised language in §668.153 governing students enrolled in a program taught in English with an ESL component.

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;

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

3 (4) Was home-schooled, and either—

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

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

10 (5) Has been determined by the institution to have the ability to benefit from the
11 education or training offered based on the satisfactory completion of 6 semester hours, 6
12 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or
13 certificate offered by the institution;

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

§ 668.141 **Scope.**

3 (a) This subpart sets forth the provisions under which a student who has neither a
4 high school diploma nor its recognized equivalent may become eligible to receive Title
5 IV, HEA program funds by—

6 (1) Achieving a passing score, specified by the Secretary, on an independently
7 administered test approved by the Secretary under this subpart; or

8 (2) Being enrolled in an eligible institution that participates in a State process
9 approved by the Secretary under this subpart.

10 (b) Under this subpart, the Secretary sets forth—

11 (1) The procedures and criteria the Secretary uses to approve tests;

12 (2) The basis on which the Secretary specifies a passing score on each approved
13 test;

14 (3) The procedures and conditions under which the Secretary determines that an
15 approved test is independently administered; ~~and~~

16 (4) The information that a test publisher or a State must submit, as part of its test
17 submission, to explain the methodology it will use for the required test anomaly studies;

18 (5) The requirement that a test publisher or a State: (i) have a process to identify
19 and follow up on test score irregularities; (ii) take action to decertify test administrators if
20 the test publisher or the State determines that test score irregularities have occurred; and
21 (iii) report to the Secretary the names of any test administrators it decertifies and any
22 other actions taken as a result of test score analyses; and

23 ~~(4)~~ (6) The procedures and conditions under which the Secretary determines that
24 a State process demonstrates that students ~~in~~ who complete the process have the ability to
25 benefit from the education and training being offered to them.

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

27 **§ 668.142 Special definitions.**

28 The following definitions apply to this subpart:

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

1 (1) Is located at an eligible institution of higher education that provides two-year
2 or four-year degrees; or ~~qualifies as an eligible public vocational institution, i.e. is a~~
3 ~~“postsecondary vocational institution;”~~

4 (2) Is responsible for gathering and evaluating information about individual
5 students for multiple purposes, including appropriate course placement;

6 (3) Is independent of the admissions and financial aid processes at the institution
7 at which 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
10 this subpart; and

11 ~~(5) (6)~~ Does not have as its primary purpose the administration of ability-to-
12 benefit tests.

13 *Computer-based test:* A test taken by a student on a computer and scored by a
14 computer.

15 ~~*Disabled student:* A student who has a physical or mental impairment that~~
16 ~~substantially limits one or more major life activities, has a record of such an impairment,~~
17 ~~or is regarded as having such an impairment.~~

18 *General learned abilities:* Cognitive operations, such as deductive reasoning,
19 reading comprehension, or translation from graphic to numerical representation, that may
20 be learned in both school and non-school environments.

21 *Independent test administrator.* A test administrator who administer tests at a
22 location other than an assessment center and who—

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

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

29 (iii) Is not a current or former member of the board of directors, a current or
30 former employee of or a consultant to a member of the board of directors, chief executive

1 officer, chief financial officer of the institution, its affiliates, or its parent corporation or
2 at any other institution, or a member of the family of any of the above individuals; and

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

4 *Individual with a disability:* A person who has a physical or mental impairment
5 which substantially limits one or more major life activities, has a record of such an
6 impairment, or is regarded as having such an impairment.

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

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

12 *Test:* A standardized test, assessment or instrument that has a formal protocol on
13 how it is to be administered in order to be valid. These protocols include, for example,
14 the use of parallel, equated forms, testing conditions, time allowed for the test, and
15 standardized scoring. Tests are not limited to traditional paper and pencil (or computer-
16 administered) instruments for which forms are constructed prior to administration to
17 examinees. Tests may also include adaptive tests that use computerized algorithms for
18 selecting and administering items in real time; however, for such instruments, the size of
19 the item pool and the method of item selection must ensure negligible overlap in items
20 across retests.

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

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

28 *Test publisher:* An individual, organization, or agency that owns a registered
29 copyright of a test, or ~~has been authorized by the copyright holder to represent the~~
30 ~~copyright holder’s interests regarding the test is licensed by the copyright holder to sell or~~
31 ~~distribute a test.~~

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

2 **§ 668.143 [Reserved] ~~Approval of State tests or assessments.~~**

3 ~~(a) The Secretary approves tests or other assessments submitted by a State that~~
4 ~~the State uses to measure a student's skills and abilities for the purpose of determining~~
5 ~~whether the student has the skills and abilities the State expects of a high school graduate~~
6 ~~in that State.~~

7 ~~(b) The Secretary approves passing scores or other methods of evaluation~~
8 ~~established by the State for each test or assessment described in paragraph (a) of this~~
9 ~~section.~~

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

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

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

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

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

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

24 ~~(Authority: 20 U.S.C. 1091(d))~~

25 **§ 668.144 Application for test approval.**

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

27 (a) The Secretary only reviews tests under this subpart that are submitted by the
28 publisher of that test or by a State;

29 (b) A test publisher or a State that wishes to have its test approved by the
30 Secretary under this subpart must submit an application to the Secretary at such time and
31 in such manner as the Secretary may prescribe. The application shall contain all the

1 information necessary for the Secretary to approve the test under this subpart, including
2 but not limited to, the information contained in ~~this section paragraph (c) or (d) of this~~
3 ~~section, as applicable~~; and

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

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

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

9 (3) Each edition, ~~and~~ form, ~~level and sub-test~~ of the test for which the publisher
10 requests approval;

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

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

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

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

18 (8) ~~For tests first published five years or more before the date submitted to the~~
19 ~~Secretary for review and approval, d~~Documentation of periodic reviews of the content
20 and specifications of the test to ensure that the test ~~continues to~~ reflects secondary school
21 level verbal and quantitative skills;

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

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

30 (11) A technical manual that includes—

- 1 (i) An explanation of the methodology and procedures for measuring the
2 reliability of the test;
- 3 (ii) Evidence that different forms of the test, including, if applicable, short forms,
4 are comparable in reliability;
- 5 (iii) Other evidence demonstrating that the test permits consistent assessment of
6 individual skill and ability;
- 7 (iv) Evidence that the test was normed using—
- 8 (A) Groups that were of sufficient size to produce defensible standard errors of
9 the mean and were not disproportionately composed of any race or gender; and
- 10 (B) A contemporary ~~population~~ sample that is representative of the population of
11 persons who are beyond the usual age of compulsory school attendance in the United
12 States;
- 13 (v) Documentation of the level of difficulty of the test;
- 14 (vi) Unambiguous scales and scale values so that standard errors of measurement
15 can be used to determine statistically significant differences in performance; ~~and~~
- 16 (vii) Additional guidance on the interpretation of scores resulting from any
17 modifications of the tests for persons individuals with ~~documented~~ disabilities;
- 18 (12) The manual provided to test administrators containing procedures and
19 instructions for test security and administration, and the forwarding of tests to the test
20 publisher;
- 21 (13) An analysis of the item-content of each edition, form, level, and (if
22 applicable) sub-test to demonstrate compliance with the required secondary school level
23 criterion specified in §668.146(b);
- 24 ~~(14) For performance-based tests or tests containing performance-based sections,~~
25 ~~a description of the training or certification required of test administrators and scorers by~~
26 ~~the test publisher;~~
- 27 ~~(15)~~ (14) A description of retesting procedures and the analysis upon which the
28 criteria for retesting are based; ~~and~~
- 29 ~~(16)~~ (15) Other evidence establishing the test's compliance with the criteria for
30 approval of tests as provided in §668.146.;
- 31 (16) A description of its test administrator certification process that provides—

1 (i) How the test publisher will determine that the test administrator has the
2 necessary training, knowledge, and skill to test students in accordance with the test
3 publisher’s requirements; and

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

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

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

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

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

17 (18)(i) A description of accommodations available for individuals with
18 disabilities, including an explanation of any accessible technologies that are available to
19 accommodate individuals with disabilities, and

20 (ii) A description of the process for a test administrator to identify and report to
21 the test publisher when accommodations for individuals with disabilities were provided,
22 for scoring and norming purposes.

23 (d) A State shall include with its application—

24 (1) The information necessary for the Secretary to determine that the test the
25 State uses measure a student’s skills and abilities for the purpose of determining whether
26 the student has the skills and abilities the State expects of a high school graduate in that
27 State;

28 (2) The passing scores on that test;

29 (3) Any guidance on the interpretation of scores resulting from any modifications
30 of the test for individuals with disabilities;

31 (4) A statement regarding how the test will be kept secure;

1 (5) A description of retesting procedures and the analysis upon which the criteria
2 for retesting are based;

3 (6) Other evidence establishing the test’s compliance with the criteria for
4 approval of tests as provided in §668.146;

5 (7) A description of its test administrator certification process that provides—

6 (i) How the State will determine that the test administrator has the necessary
7 training, knowledge, and skill to test students in accordance with the State’s
8 requirements; and

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

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

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

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

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

21 (9)(i) A description of accommodations available for individuals with disabilities,
22 including an explanation of any accessible technologies that are available to
23 accommodate individuals with disabilities, and

24 (ii) A description of the process for a test administrator to identify and report to
25 the test publisher when accommodations for individuals with disabilities were provided,
26 for scoring and norming purposes.

27 (10) The name, address, telephone number, and e-mail address of a contact
28 person to whom the Secretary may address inquiries.

29 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
30 1845-0049)

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

1 § 668.145 Test approval procedures.

2 ~~Except as provided in §668.143—~~

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

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

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

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

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

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

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

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

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

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

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

11 ~~(e) (d)~~(1) The Secretary's approval of a test may be ~~withdrawn~~ revoked if the
12 Secretary determines that the test publisher or the State violated any terms of the
13 agreement described in §668.150, ~~or~~ that the information the test publisher or the State
14 submitted as a basis for approval of the test was inaccurate, or that the test publisher or
15 the State substantially changed the test and did not resubmit the test, as revised, for
16 approval;

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

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

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

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

27 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
28 1845-0049)

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

30 **§ 668.146 Criteria for approving tests.**

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

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

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

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

8 (2) Sample the major content domains of secondary school level verbal and
9 quantitative skills with sufficient numbers of questions to—

10 (i) Adequately represent each domain; and

11 (ii) Permit meaningful analyses of item-level performance by students who are
12 representative of the contemporary population beyond the age of compulsory school
13 attendance and have earned a high school diploma;

14 (3) Require appropriate test-taking time to permit adequate sampling of the major
15 content domains described in paragraph (a)(2) of this section;

16 (4) Have all forms (including short forms) comparable in reliability;

17 (5) Have, in the case of a ~~If the~~ test that is revised, ~~have~~ new scales, scale values,
18 and scores that are demonstrably comparable to the old scales, scale values, and scores;
19 ~~and~~

20 (6) Meet all primary and applicable conditional and secondary standards for test
21 construction provided in the ~~1985~~ 1999 edition of the *Standards for Educational and*
22 *Psychological Testing*, ~~with amendments dated June 2, 1989~~, prepared by a joint
23 committee of the American Educational Research Association, the American
24 Psychological Association, and the National Council on Measurement in Education
25 incorporated by reference in this section. Incorporation by reference of this document has
26 been approved by the Director of the Office of the Federal Register pursuant to the
27 Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated
28 document is on file at the Department of Education, Federal Student Aid, Room 113E2,
29 830 First Street, N.E., Washington, D.C. 20002 ~~Office of Postsecondary Education,~~
30 ~~Room 4318, ROB-3, 600 Independence Avenue, S.W., Washington, D.C. 20202~~ and at
31 the National Archives and Records Administration (NARA). For information on the

1 availability of this material at NARA, call ~~202-741-6030~~ 1-866-272-6272, or go to:
2 http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html
3 . The standards may be obtained from the American Educational Research Association at:
4 <http://www.aera.net/AERAShopper/ProductDetails.aspx?productID=AERWSTDEPT>
5 ~~American Psychological Association, Inc., 750 First Street, N.W., Washington, DC~~
6 ~~20026.~~ ; and

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

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

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

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

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

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

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

22 (4) Norm the test with—

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

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

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

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

1 (ii) One composite passing score for verbal skills and one composite passing
2 score for quantitative skills.

3 (d) In addition, for a test to be approved by the Secretary, the Secretary must
4 make a determination that the information the test publisher or State submitted in
5 accordance with paragraph (c)(17) or (d) (8) of §668.144 provides adequate assurance
6 that the test publisher or State will conduct rigorous test anomaly analyses and take
7 appropriate action if test administrators do not comply with testing procedures.

8 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
9 1845-0049)

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

11 **§ 668.147 Passing scores.**

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

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

18 **§ 668.148 Additional criteria for the approval of certain tests.**

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

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

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

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

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

28 ~~(2) (1)~~ In the case of a test developed for a non-native speaker of English who is
29 enrolled in a program that is taught in his or her native language, the test must be—

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

- 1 (ii) Supported by documentation detailing the development of normative data;
- 2 (iii) If translated from an English version, supported by documentation of
3 procedures to determine its reliability and validity with reference to the population for
4 which the translated test was designed;
- 5 (iv) Developed in accordance with guidelines provided in the ~~1985~~ 1999 edition
6 of the ~~“Testing Linguistic Minorities”~~ “Testing Individuals of Diverse Linguistic
7 ~~Backgrounds”~~ section of the *Standards for Educational and Psychological Testing*, ~~with~~
8 ~~amendments dated June 2, 1989~~, prepared by a joint committee of the American
9 Educational Research Association, the American Psychological Association, and the
10 National Council on Measurement in Education incorporated by reference in this section.
11 Incorporation by reference of this document has been approved by the Director of the
12 Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a)
13 and 1 CFR part 51. The incorporated document is on file at the Department of Education,
14 ~~Federal Student Aid, Room 113E2, 830 First Street, N.E., Washington, D.C. 20002~~
15 ~~Office of Postsecondary Education, Room 4318, ROB-3, 600 Independence Avenue,~~
16 ~~S.W., Washington, D.C. 20202~~ and at the National Archives and Records Administration
17 (NARA). For information on the availability of this material at NARA, call 202-741-
18 6030, or go to:
19 http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html
20 . The standards may be obtained from the [American Educational Research Association at:](http://www.aera.net/AERAShopper/ProductDetails.aspx?productID=AERWSTDEPT)
21 <http://www.aera.net/AERAShopper/ProductDetails.aspx?productID=AERWSTDEPT>
22 ~~American Psychological Association, Inc., 750 First Street, N.W., Washington, DC~~
23 ~~20026.~~; and
- 24 (v)(A) If the test is in Spanish, accompanied by a distribution of test scores that
25 clearly indicates the mean score and standard deviation for Spanish-speaking students
26 with high school diplomas who have taken the test within 5 years before the date on
27 which the test is submitted to the Secretary for approval; and
- 28 (B) If the test is in a language other than Spanish, accompanied by a
29 recommendation for a provisional passing score based upon performance of a sample of
30 test takers representative of the intended population and large enough to produce stable
31 norms.

1 ~~(3)~~ (2) In the case of a test that is modified for use for ~~persons~~ individuals with
2 disabilities, the test publisher or State must—
3 (i) Follow guidelines provided in the ~~“Testing People Who Have Handicapping~~
4 ~~Conditions”~~ “Testing Individuals with Disabilities” section of the *Standards for*
5 *Educational and Psychological Testing*; and
6 (ii) Provide documentation of the appropriateness and feasibility of the
7 modifications relevant to test performance. ~~;~~ and
8 ~~(iii) Recommend passing score(s) based on the previous performance of test takers;~~
9 ~~(4)~~ (3) In the case of a computer-based test, the test publisher or State must—
10 (i) Provide documentation to the Secretary that the test complies with the basic
11 principles of test construction and standards of reliability and validity as promulgated in
12 the *Standards for Educational and Psychological Testing*, ~~as well as specific guidelines~~
13 ~~set forth in the American Psychological Association's *Guidelines for Computer-based*~~
14 ~~*Tests and Interpretations* (1986);~~
15 (ii) Provide test administrators with instructions for familiarizing test takers with
16 computer hardware prior to test-taking; and
17 (iii) Provide two or more parallel, equated forms of the test, or, if parallel forms
18 are generated from an item pool, provide documentation of the methods of item selection
19 for alternate forms; and
20 (b) If a test is designed solely to measure the English language competence of
21 non-native speakers of English—
22 (1) The test must meet the criteria set forth in §668.146(b)(6), and §668.146
23 (c)(1), (c)(2), and (c)(4); and
24 (2) The test publisher must recommend a passing score based on the mean score
25 of test takers beyond the age of compulsory school attendance who entered U.S. high
26 school equivalency programs, formal training programs, or bilingual vocational
27 programs.
28 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
29 1845-0049)
30 (Authority: 20 U.S.C. 1091(d))

1 § 668.149 Special provisions for the approval of assessment procedures for **special**
2 **populations for whom no tests are reasonably available individuals with disabilities**.

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

7 ~~(a) Persons with disabilities~~. ~~(1)~~ The Secretary considers a modified test or testing
8 procedure, or instrument that has been scientifically developed specifically for the
9 purpose of evaluating the ability to benefit from postsecondary training or education of
10 ~~disabled students~~ individuals with disabilities to be an approved test for purposes of this
11 subpart provided that the testing procedure or instrument measures both basic verbal and
12 quantitative skills at the secondary school level.

13 ~~(2)~~ ~~(b)~~ The Secretary considers the passing scores for these testing procedures or
14 instruments to be those recommended by the test developer, provided that the test
15 administrator—

16 ~~(i)~~ ~~(1)~~ Uses those procedures or instruments;

17 ~~(ii)~~ ~~(2)~~ Maintains appropriate documentation, including a description of the
18 procedures or instruments, their content domains, technical properties, and scoring
19 procedures; and

20 ~~(iii)~~ ~~(3)~~ Observes recommended passing scores.

21 ~~(b) Students whose native language is not English~~. ~~The Secretary considers a test in~~
22 ~~student's native language for a student whose native language is not English to be an~~
23 ~~approved test under this subpart if—~~

24 ~~(1) The Secretary has not approved any test in that native language;~~

25 ~~(2) The test was not previously rejected for approval by the Secretary;~~

26 ~~(3) The test measures both basic verbal and quantitative skills at the secondary~~
27 ~~school level; and~~

28 ~~(4) The passing scores and the methods for determining the passing scores are~~
29 ~~fully documented.~~

30 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
31 1845-0049)

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

2 **§ 668.150 Agreement between the Secretary and a test publisher or a State.**

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

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

9 (1) Allow only test administrators that it certifies to give its test;

10 (2) Require each test administrator it certifies to –

11 (i) Provide the test publisher or the State with a certification statement that
12 indicates he or she is not currently decertified; and

13 (ii) Notify the test publisher or the State immediately if any other test publisher
14 or State decertifies the test administrator;

15 ~~(2)~~ (3) Only ~~C~~ certify test administrators who ~~have~~—

16 (i) ~~Have T~~ Have the necessary training, knowledge, and skill to test students in
17 accordance with the test publisher's or the State's testing requirements; ~~and~~

18 (ii) ~~Have T~~ Have the ability and facilities to keep its test secure against disclosure or
19 release; ~~and~~

20 (iii) Have never been decertified or have not been decertified within the last three
21 years by any test publisher or State;

22 ~~(3)~~ (4) Decertify a test administrator for a period of three years that coincides
23 with the period for which the publisher's test is approved if the test publisher or the State
24 finds that the test administrator—

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

27 (ii) Has not kept the test secure;

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

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

1 (5) Re-evaluate the qualifications of a test administrator who has been decertified
2 by another test publisher or State and determine whether to continue the test
3 administrator's certification or to decertify the test administrator;

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

7 (7) If the Secretary determines that one or more test results provided by a
8 decertified test administrator are invalid, immediately notify the affected students or
9 prospective students;

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

13 ~~(4)~~ (9) Score a test answer sheet that it receives from a test administrator;

14 ~~(5)~~ (10) If a computer-based test is used, provide the test administrator with
15 software that will:

- 16 (i) Immediately generate a score report for each test taker;
17 (ii) Allow the test administrator to send to the test publisher or the State a ~~secure~~
18 ~~write-protected-diskette-copy record~~ of the test taker's performance on each test item and
19 the test taker's test scores using a data transfer method that is encrypted and secure; and
20 (iii) Prohibit any changes in test taker responses or test scores.

21 ~~(6)~~ (11) Promptly send to the student and the institution the student indicated he
22 or she is attending or scheduled to attend a notice stating the student's score for the test
23 and whether or not the student passed the test;

24 ~~(7)~~ (12) Keep ~~for a period of three years~~ each test answer sheet or electronic
25 record forwarded for scoring and all other documents forwarded by the test administrator
26 with regard to the test for a period of three years from the date the analysis of the tests
27 results, described in paragraph (b)(11) of this section, was sent to the Secretary;

28 ~~(8)~~ (13) ~~Three years after the date the Secretary approves the test and for each~~
29 ~~subsequent three-year period, a~~ Analyze the test scores of students who take the test to
30 determine whether the test scores and data produce any irregular pattern that raises an
31 inference that the tests were not being properly administered, and provide the Secretary

1 with a copy of this analysis within 18 months after the test was approved and every 18
2 months thereafter during the period of test approval; ~~and~~

3 ~~(9)~~ (14) Upon request, give the Secretary, a ~~guaranty agency~~ State agency, ~~or~~
4 an accrediting agency, and law enforcement agencies access to test records or other
5 documents related to an audit, investigation, or program review of ~~the~~ an institution, the
6 test publisher, or a test administrator;

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

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

13 (17) Require a test administrator who provides a test to an individual who has a
14 disability requiring an accommodation in the test's administration to report to the test
15 publisher or the State within the time period specified in §668.151(b)(2) or
16 §668.152(b)(2), as applicable, the nature of the disability and the accommodations that
17 were provided

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

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

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

27 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
28 1845-0049)

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

30 **§ 668.151 Administration of tests.**

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

4 (2) An institution may use the results of an approved test it received from an
5 approved test publisher or assessment center to determine a student's eligibility to receive
6 Title IV, HEA programs funds if the test was independently administered and properly
7 administered.

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

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

12 (2) Given by an independent test administrator who maintains tests at a secure
13 location other than at the institution at which the tests are being administered, and
14 submits the test for scoring by the test publisher or the State within two business days of
15 administering the test. —

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

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

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

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

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

29 (1) Compromises test security or testing procedures;

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

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

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

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

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

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

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

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

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

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

22 (f) ~~An~~ student individual who fails to pass a test approved under this subpart may
23 not retake the same form of the test for the period prescribed by the test's publisher or the
24 State.

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

27 (1) The test taken by the student individual;

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

29 (3) The student's individual's scores as reported by the test publisher, an
30 assessment center, or the State;

1 (4) The name and address of the test administrator who administered the test and
2 any identifier assigned to the test administrator by the test publisher or the State; and

3 (5) If the individual who took the test has a disability and was unable to be
4 evaluated by the use of a conventional test from the list of tests approved by the Secretary
5 or required testing accommodations, documentation of the individual's disability and
6 testing arrangements in accordance with §668.153(b)(3).

7 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
8 1845-0049)

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

10 **§ 668.152 Administration of tests by assessment centers.**

11 (a)~~(1)~~ If a test is given by an assessment center, the assessment center shall
12 properly administer the test as described in §668.151(d) , and §668.153, if applicable.

13 ~~(2) [Reserved]~~

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

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

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

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

26 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
27 1845-0049)

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

29 **§ 668.153 Administration of tests for ~~students~~ individuals whose native language is**
30 **not English or for ~~persons~~ individuals with disabilities.**

31 Except as provided in §668.143—

1 (a) *Students Individuals* whose native language is not English. For ~~a student an~~
2 individual whose native language is not English and who is not fluent in English, the
3 institution shall use the following tests, as applicable:

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

7 (2) If the student individual is enrolled or plans to enroll in a program that is
8 taught in English with an ESL component, ~~and the student is enrolled in that program~~
9 ~~and the ESL component~~, the student individual must take ~~either~~ an ESL test approved
10 under §668.148(b), ~~or and, before beginning the portion of the program taught in~~
11 English, a test ~~in the student's native language~~ approved under §§668.146 ~~or 668.148~~.

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

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

18 (b) *Persons Individuals* with disabilities. (1) An institution shall use a test
19 described in §668.148(a)(3) or 668.149(a) for ~~a student an individual~~ with a disability
20 ~~documented impairment~~ who has neither a high school diploma nor its equivalent and
21 who is applying for Title IV, HEA program funds.

22 (2) The test must reflect the student's individual's skills and general learned
23 abilities. ~~rather than reflect the student's impairment~~.

24 (3) The institution shall require the test administrator to document that ~~a student~~
25 the individual has a disability and requires accommodations for taking an approved test,
26 such as extra time or a quiet room, or is disabled and unable to be evaluated by the use of
27 a conventional test from the list of tests approved by the Secretary

28 (4) Documentation of ~~a student's impairment~~ an individual's disability may be
29 satisfied by—

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

(ii) A record of ~~such a determination by an elementary or secondary school~~ the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency that identifies the disability. ~~, including a diagnosis and recommended testing accommodations and may include a diagnosis and recommended testing accommodations.~~

(Approved by the Office of Management and Budget under control number ~~1840-0627~~ 1845-0049)

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

§ 668.154 Institutional accountability.

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

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

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

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

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

§ 668.155 [Reserved] Transitional rule for the 1996-97 award year.

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

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

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

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

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

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

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

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

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

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

23 (4) Assistance in developing educational goals;

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

26 (6) Follow-up by teachers and counselors regarding the student's classroom
27 performance and satisfactory progress toward program completion.

28 (d) A State process must—

29 (1) Monitor on an annual basis each participating institution's compliance with
30 the requirements and standards contained in the State's process;

1 (2) Require corrective action if an institution is found to be in noncompliance
2 with the State process requirements; and

3 (3) Terminate an institution from the State process if the institution refuses or
4 fails to comply with the State process requirements.

5 (e)(1) The Secretary responds to a State's request for approval of its State's
6 process within six months after the Secretary's receipt of that request. If the Secretary
7 does not respond by the end of six months, the State's process ~~becomes effective~~ is
8 deemed to be approved.

9 (2) An approved State process becomes effective for purposes of determining
10 student eligibility for Title IV, HEA program funds under this subpart—

11 (i) on the date the Secretary approves the process; or

12 (ii) six months after the date on which the State submits the process to the
13 Secretary for approval, if the Secretary neither approves; nor does not disapproves; the
14 process during that six month period.

15 (f) The Secretary approves a State process for a period not to exceed five years.

16 (g)(1) The Secretary withdraws approval of a State process if the Secretary
17 determines that the State process violated any terms of this section or that the information
18 that the State submitted as a basis for approval of the State process was inaccurate.

19 (2) The Secretary provides a State with the opportunity to contest a finding that
20 the State process violated any terms of this section or that the information that the State
21 submitted as a basis for approval of the State process was inaccurate.

22 (h) The State shall calculate the success rates as referenced in paragraph (b) of
23 this section by—

24 (1) Determining the number of students with high school diplomas who, during
25 the applicable award year described in paragraph (i) of this section, enrolled in
26 participating institutions and—

27 (i) Successfully completed education or training programs;

28 (ii) Remained enrolled in education or training programs at the end of that award
29 year; or

30 (iii) Successfully transferred to and remained enrolled in another institution at the
31 end of that award year;

1 (2) Determining the number of students with high school diplomas who enrolled
2 in education or training programs in participating institutions during that award year;

3 (3) Determining the number of students calculated in paragraph (h)(2) of this
4 section who remained enrolled after subtracting the number of students who subsequently
5 withdrew or were expelled from participating institutions and received a 100 percent
6 refund of their tuition under the institutions' refund policies;

7 (4) Dividing the number of students determined in paragraph (h)(1) of this
8 section by the number of students determined in paragraph (h)(3) of this section;

9 (5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this
10 section for students without a high school diploma or its recognized equivalent who
11 enrolled in participating institutions.

12 (i) For purposes of paragraph (h) of this section, the applicable award year is the
13 latest complete award year for which information is available that immediately precedes
14 the date on which the State requests the Secretary to approve its State process, except that
15 the award year selected must be one of the latest two completed award years preceding
16 that application date.

17 (Approved by the Office of Management and Budget under control number ~~1840-0627~~
18 1845-0049)

19 (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?

Updated information since December meeting:

- We returned the word “substantial” into the scope to make the language more precise.
- We added language to the definition of “misrepresentation” to clarify the broad population to whom it applies and additional detail to ensure that a wide range of statements or omissions are covered.
- We added language regarding employability of graduates to make certain the institution shares information it should know or reasonably should know about future compensation as well as other requirements that are generally needed in order to be employed in certain fields.

1 **Draft Regulatory Language:**

2

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

4 (a) This subpart establishes the types of activities that constitute substantial
5 misrepresentation by an eligible institution, including those eligible institutions that have
6 contracts or agreements with non-eligible institutions. ~~the standards and rules by which~~
7 ~~the Secretary may initiate a proceeding under subpart G_ against an otherwise eligible~~
8 ~~institution for any substantial_~~ Engaging in these activities, to include the making of
9 substantial misrepresentations_ made-by ~~anthat~~ _institution ~~regarding_ of~~ the nature of its
10 educational program, its financial charges, or the employability of its graduates, as well
11 as misrepresentations in any advertising, promotional materials, or in the marketing or
12 sale of courses or programs of instruction offered by the institution, may result in

1 | restrictions being placed upon, or denials of, participation applications, or a proceeding
2 | under subpart G .

3 | (b) The following definitions apply to this subpart:

4 | *Misrepresentation:* Any false, erroneous or misleading statement an eligible institution or
5 | its representative -makes directly or indirectly -to a student, prospective student or any
6 | member of the public or to ~~the family of an enrolled or prospective student, an~~
7 | accrediting agency, a State agency, or to the Secretary. A misleading statement includes
8 | any statement or omission with the capacity, likelihood or tendency to deceive or
9 | confuse. A statement includes visuals or sounds, and verbal communication.

10 | Misrepresentation includes the dissemination of endorsements and testimonials that are
11 | requested from students as part of a program of instruction or given under duress.

12 | *Prospective student:* Any individual who has contacted an eligible institution for the
13 | purpose of requesting information about enrolling at the institution or who has been
14 | contacted directly by the institution or indirectly through ~~general~~-advertising about
15 | enrolling at the institution.

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

19 | (Authority: 20 U.S.C. 1094)

20 | ***§ 668.72 Nature of educational program.***

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

23 | (a)(1) The particular type(s), specific source(s), nature and extent of its accreditation;
24 | and

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

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

6 (2) Conditions under which the institution will accept transfer credits earned at another
7 institution;

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

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

10 (2) To receive, or to take the examination required to receive receipt of a local, State, or
11 Federal license, or a non-governmental certification required as a precondition for
12 employment, or to perform certain functions; or which the school knows or should know
13 is generally needed to secure employment in a recognized occupation for which the
14 program is represented to prepare students;

15 (d) The requirements for successfully completing the course of study or program and the
16 circumstances that would constitute grounds for terminating the student's enrollment;

17 (de) Whether its courses are recommended or have been the subject of unsolicited
18 testimonials or endorsements by including but not limited to—

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

21 (2) Governmental officials for governmental employment;

22 (ef) Its size, location, facilities or equipment;

23 (fg) The availability, frequency and appropriateness of its courses and programs to the
24 employment objectives that it states its programs are designed to meet;

1 | (~~gh~~) The nature, age and availability of its training devices or equipment and their
2 | appropriateness to the employment objectives that it states its programs and courses are
3 | designed to meet;

4 | (~~hi~~) The number, availability and qualifications, including the training and experience, of
5 | its faculty and other personnel;

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

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

10 | (~~kl~~) The nature ~~or~~ extent of any prerequisites established for enrollment in any course;

11 | (m) The subject matter, content of the course of study, or any other fact related to the
12 | degree, diploma, certificate of completion, or any similar document that the student is to
13 | be, or was, awarded;

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

18 | (~~lo~~) Any matters required to be disclosed to prospective students under §§668.44 and
19 | 668.47 of this part.

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

21 | [51 FR 43324, Dec. 1, 1986, as amended at 54 FR 24118, June 5, 1989; 59 FR 22320,
22 | Apr. 29, 1994]

23 | **§ 668.73 Nature of financial charges.**

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

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

7 (b) Whether a particular charge is the customary charge at the institution for a course;:-

8 (c) The cost of the program and the school's refund policy if the student does not
9 complete the program;

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

13 (e) The borrower's right to reject any particular type of financial aid or other assistance
14 otherwise representing that the borrower must apply for a particular type of financial aid,
15 such as credit offered by the institution.

16

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

18 **§ 668.74 *Employability of graduates.***

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

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

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

4 (c) That the institution knows or reasonably should know do not accurately reflect the
5 current or likely future conditions, compensation, or employment opportunities in the
6 industry or occupation for which the students are being prepared, and compensated;

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

11 (ee) Concerning government job market statistics in relation to the potential placement of
12 its graduates; or

13 (f) Concerning other requirements that are generally needed to be employed in the fields
14 for which the training is provided, such as commercial driving licenses or permits to
15 carry firearms, and failing to disclose factors that would prevent an applicant from
16 qualifying for such requirements such as prior criminal records or pre-existing medical
17 conditions.

18
19 (Authority: 20 U.S.C. 1094)

20
21 § 668.75 Relationship with the Department of Education

22 An institution may not describe its participation in the title IV, HEA programs in a
23 manner that suggests approval or endorsement by the U.S. Department of Education of
24 the quality of its educational programs.

1 ~~§ 668.75 Procedures.~~

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

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

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

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

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

16

Issue Paper #4

Team I – Program Integrity Issues

Issue:	Incentive Compensation
Statutory cites:	HEA section 487(a)(20)
Regulatory cites:	34 CFR 668.14(b)(22)
Summary question(s):	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.”

Updated information since December meeting: Awaiting suggestions from non-federal negotiators.

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 ~~limitation~~
7 ~~paragraph~~ does not apply to the recruitment of foreign students residing in foreign countries who
8 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?

Updated information since December meeting:

In response to suggestions from the non-Federal negotiators, we have removed the provisions dealing with monitoring the quality of educational programs and financial responsibility and the provision concerning reciprocal agreements between States. We added provisions under which an institution is considered to be legally authorized in a State if it is a public institution or is authorized by the Federal Government. In addition, we have clarified the conditions under which an institution is not legally authorized.

1
2 Draft regulatory language
3 PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF
4 1965, AS AMENDED

5 §600.4 Institution of higher education.

6 (a) * * *

7 (3) Is legally authorized to provide an education program beyond secondary education in
8 the State in which the institution is physically located [in accordance with section 600.9](#);

9 * * * * *

10 §600.5 Proprietary institution of higher education.

1 (a) * * *

2 (3) Is legally authorized to provide an education program beyond secondary education in
3 the State in which the institution is physically located [in accordance with section 600.9](#);

4

5 * * * * *

6 §600.6 Postsecondary vocational institution.

7 (a) * * *

8 (3) Is legally authorized to provide an education program beyond secondary education in
9 the State in which the institution is physically located [in accordance with section 600.9](#);

10 * * * * *

11 [§600.9 State authorization.](#)

12 [\(a\)\(1\) An institution described under §§600.4, 600.5, and 600.6 may be legally](#)
13 [authorized by a State through--](#)

14 [\(i\) A charter, license, or other document issued by an appropriate State government](#)
15 [agency or State entity that affirms or conveys authority to the institution to operate educational](#)
16 [programs beyond secondary education and grant degrees within the jurisdiction of the State; or](#)

17 [\(ii\) An action, and written documentation, by an appropriate State government agency](#)
18 [that authorizes, licenses, or otherwise approves the institution to establish and operate within the](#)
19 [State nondegree programs that provide education and training beyond secondary education.](#)

20 [\(2\) An institution is considered to meet the provisions of paragraph \(a\)\(1\) of this section](#)
21 [if the institution is--](#)

1 (i) An institution offering educational programs beyond secondary education that is a
2 public institution as determined under 34 CFR 668.171(c); or

3 (ii) An institution authorized by the Federal Government to offer educational programs
4 beyond secondary education.

5 (b) The Secretary does not consider an institution to be legally authorized by a State
6 under paragraph (a)(1) of this section if--

7 (1) The authorization is a type of State approval that is also given to entities that are not
8 postsecondary educational institutions, or if the State authorization is based on the institution's
9 age or its status with a non-State entity; or

10 (2) The authorization for the institution is not subject to review or revocation for cause
11 by the State, including for failure to comply with State consumer protection laws.

Issue Paper #6

Team I – Program Integrity Issues

Issue:	Gainful Employment in a Recognized Occupation
Statutory cites:	HEA sections 101(b)(1); 102(b)(1)(A)(i); 102(c)(1)(A)
Regulatory cites:	§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). 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.

Gainful Employment –We are not providing regulatory language at this time [December meeting].

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

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

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

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

Issues

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

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

Option 2: Debt/Income ratio

Another approach would be to look at whether a student’s starting annual income is adequate to repay the average debt service obligation for someone completing a specific program, while still having an adequate amount available to meet living expenses. For example, in a particular field the average debt for a student completing a certificate program is \$9000. That student would have annual loan repayments totaling \$1250. For a debt-to-income ratio of 5

percent, a minimum qualifying income of at least \$25,000 would be required to satisfy a “gainful employment” standard. For the qualifying income, we could use BLS data or wage data reliably obtained by institutions.

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

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

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?

Updated information since December meeting

- 1 The language updates the regulations to make reference to the new name and web site for the
2 Bureau of Labor Statistics (BLS) listing of occupations.
- 3 In terms of the definition of “gainful employment,” based on the discussion at the December
4 meeting and other input and analysis, we have not further developed the first option described in
5 the December meeting, which would have required a reasonable relationship between the cost of
6 the program to the expected earnings. Instead, the attached draft builds on the second idea, using
7 a student loan payment-to-income ratio as a primary indicator. Further, the draft allows several
8 alternative methods of demonstrating eligibility for programs that do not meet that measure.
- 9 In effect, the approach in the draft would start by asking institutions:
- 10 *Are graduates with typical student debt able to repay their loans in ten years without*
11 *taking more than 8 percent of the expected earnings in the occupation?*

1 Eight percent is the standard that has appeared most frequently in the literature. One alternative
2 would be a more progressive measure such as the one recommended by Sandy Baum and Saul
3 Schwartz in How Much Debt is Too Much: Defining Benchmarks for Manageable Student Debt,
4 <http://professionals.collegeboard.com/profdownload/pdf/06-0869.DebtPpr060420.pdf>. However,
5 that approach would exclude all programs that lead to lower-paying jobs because it assumes that
6 at income below 150% of poverty *any* student loan payment is a struggle to manage.

7 The BLS earnings data are for *all* workers in an occupation, while students face their debts when
8 they *enter* the occupation. For this reason, the draft uses the 25th percentile of earnings as a
9 proxy for earnings levels for newer entrants to the occupation.

10 If a program does not meet the 8 percent measure, the institution could still qualify the program
11 in any one of three ways:

12 *Show that the **actual** earnings of the institution's graduates (rather than the BLS*
13 *earnings) are high enough to reduce the ratio below 8 percent.*

14 Or

15 *Show that former students are repaying their loans without having to resort to deferrals*
16 *for unemployment or economic hardship or forbearances*

17 Or

18 *Show that the program has at least a 70 percent completion rate and a 70 percent*
19 *placement rate. (The same rates required of shorter-term programs)*

20 Because new programs at an institution would not yet have the track record that would allow for
21 an institution to provide debt levels, completion rates, or placement rates, the draft allows for an
22 alternative reporting and compliance provisions.

23 **Draft Regulatory Language**

24 PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF
25 1965, AS AMENDED

26 §600.2 Definitions

27 * * * *

1 *Recognized occupation:* An occupation that is--

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

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

8 * * * * *

9 §600.4 Institution of higher education.

10 (a) * * *

11 (4) (i) Provides an educational program--

12 (A) * * *

13 (C) That is at least a one-academic-year program that leads to a certificate, degree, or
14 other recognized credential and prepares students for gainful employment in a recognized
15 occupation as determined under 34 CFR 668.6; and

16 * * * * *

17 §600.5 Proprietary institution of higher education.

18 (a) * * *

19 (5) (i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to
20 prepare students for gainful employment in a recognized occupation as determined under 34
21 CFR 668.6; or

22 * * * * *

23 §600.6 Postsecondary vocational institution.

24 (a) * * *

25 (4)(i) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare
26 students for gainful employment in a recognized occupation as determined under 34 CFR 668.6;
27 and

1 * * * * *

2 PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3 Subpart A—General

4 * * * * *

5 §668.6 Gainful employment in a recognized occupation.

6 (a) General. (1) An institution is considered to provide an eligible program that prepares
7 students for gainful employment in a recognized occupation if, in accordance with procedures
8 established by the Secretary, for each program offered by the institution under §668.8(c)(3) or
9 (d), the institution reports at the end of each three-year period--

10 (i) Data regarding the extent to which students enrolled in the program successfully
11 complete it and are employed in an occupation related to the training provided by that program;
12 and

13 (ii) As calculated under paragraph (b) of this section, the debt to earnings ratio associated
14 with the program is 8 percent or less. If the debt to earnings ratio for a program is more than 8
15 percent, the Secretary may nevertheless consider that program to be eligible program if the
16 institution demonstrates that it satisfies an alternative measure under paragraph (c) of this
17 section.

18 (2) For purposes of this section, a three-year period is the period covering the
19 institution's three most recently completed fiscal years. The three-year period begins on the
20 fiscal year following the last three-year period for which the institution reported data under
21 paragraph (a)(1) of this section.

22 (b) Debt to earnings ratio. As illustrated in Appendix A to this subpart, an institution
23 calculates the ratio for the three-year period by--

24 (1) Using the median loan debt incurred by students who completed the program during
25 the three-year period to calculate an annual loan payment based on a 10-year repayment schedule
26 and the current annual interest rate on unsubsidized Federal Stafford Loans or Direct
27 unsubsidized Loans. In calculating the median loan debt of students who competed the
28 program—

1 (i) The institution determines the amount of funds received by each student during the
2 three-year period from any title IV, HEA loan program, institutional loan, private education loan,
3 and the amount of any debt obligation arising from the use of retail installment contracts or other
4 similar instruments that the student is obligated to pay the institution after completing the
5 program; and

6 (ii) Arranging the values of total loan debt, including values of zero where students did
7 not incur any loan debt, in order from lowest to highest, and selecting the middle value. If there
8 is an even number of values, the median is the average of the two middle values.

9 (2) Using the most current Bureau of Labor Statistics (BLS) data, available at
10 http://www.bls.gov/oes/current/oes_stru.htm, to determine the annual earnings, at the 25th
11 percentile, made by persons employed in occupations related to the training provided by the
12 program. The institution may use national or regional BLS earnings data; and

13 (3) Dividing the amount of the annual loan payment by the annual earnings, rounding
14 down to the nearest one tenth.

15 (c) Alternative measures. A program with a debt to earnings ratio of more than 8 percent
16 may continue to qualify as an eligible program if--

17 (1) Actual earnings. (i) The institution submits information acceptable to the Secretary
18 showing that a substantial number students who completed the program during the three-year
19 period had earnings, from occupations related to the training provided by the program, that are
20 higher than the BLS earnings used in calculating the debt to earnings ratio under paragraph
21 (b)(1) of this section; and

22 (ii) By using the higher earnings to recalculate the debt to earnings ratio, the institution
23 meets the 8 percent requirement in paragraph (a)(1) of this section; or

24 (2) Loan repayment rate. The institution submits documentation to the Secretary
25 showing that students enrolled in that program have a 75 percent loan repayment rate. The loan
26 repayment rate is calculated by—

27 (i) Of the students who enrolled in that program, determining the number of student
28 borrowers who entered repayment during the most recent three-year period for which loan data

1 are available, except that this number does not include borrowers who at the end of this period
2 are in an in-school deferment status or on any military-related deferment status;

3 (ii) Of the number of borrowers who entered repayment under paragraph (b)(2)(i) of this
4 section, determining the number of borrowers who are actively repaying their loans. For this
5 purpose, a borrower is considered to be actively repaying a loan if he or she made scheduled loan
6 payments under a loan repayment plan and at the end of the three-year period the borrower--

7 (A) Is not delinquent or in default on the loan; or

8 (B) Is not in a deferment or forbearance status.

9 (iii) Dividing the number of borrowers who are actively repaying their loans under
10 paragraph (b)(2)(ii) of this section by the number of borrowers who entered repayment under
11 paragraph (b)(2)(i) of this section and multiplying the result by 100; or

12 (3) Completion and placement rates. The program completion and placement data
13 submitted by the institution under paragraph (a)(1)(i) of this section show that, for the three-year
14 period, at least 70 percent of the students enrolled in that program completed the program and
15 that at least 70 percent of those students are employed in occupations related to the training
16 provided by that program.

17 (d) Deadline for submitting documentation. The institution must submit the
18 documentation required under paragraph (c)(1) or (2) of this section no later than 45 days after
19 the date the institution reports its debt to earnings ratios under paragraph (a)(2) of this section.

20 (e) New and additional programs. An institution must calculate, and report, the debt-to-
21 earnings ratio under this section for any new or additional program it offers under §668.8(c)(3)
22 or (d).

23 (1) New programs. The institution calculates the ratio for a new program by estimating
24 the median loan debt that students would incur if they completed the program, and provides the
25 basis for that estimate when the institution applies to the Secretary under 34 CFR 600.10(c)(1) to
26 have that program designated as an eligible program; or

27 (2) Additional programs. If an additional program replaces, or will replace, a program
28 the institution offers, or previously offered, that fails or failed to satisfy the debt-to-equity ratio
29 requirement with a program that prepares students for the same or related occupation, the

1 institution must apply to the Secretary under 34 CFR 600.10(c)(1) to have the additional program
2 designated as an eligible program. When applying to the Secretary, the institution calculates the
3 ratio for the additional program by estimating the median loan debt that students would incur if
4 they completed the program, and provides the basis for that estimate.

5 (3) Reporting. The institution must--

6 (i) For any new or additional program under this paragraph, report annually to the
7 Secretary the debt-to-earnings ratio of that program using, to the extent possible, actual loan data
8 to determine the median loan debt of students who complete, or would complete, the program;

9 (ii)(A) Before offering a new or additional program under this paragraph, obtain
10 documentation from employers not affiliated with the institution affirming that the program
11 curriculum aligns with recognized occupations at those employers;

12 (B) For any new program under this paragraph, the institution may delay reporting
13 completion and placement data required under paragraph (a)(1) of this section until one year of
14 that data are available; and

15 (C) For any additional program, continue to report the program completion and
16 placement data, as required under paragraph (a)(1) of this section, of the previous and additional
17 program, unless the institution demonstrates that the data from the previous program should not
18 apply to the additional program.

19

1 Appendix A

2 Calculating the debt to earnings ratio

3 The Department of Labor maintains a **Standard Occupational Classification (SOC)**
4 system which is a numerical coding system that classifies occupational data for the purpose of
5 collecting, calculating, or disseminating data. Through that system, and associated data
6 collections, the Bureau of Labor Statistics makes available hourly and annual wage data that is
7 updated over a three year cycle. For each standard occupational classification (SOC), data on the
8 mean and 10th, 25th, 50th (median), 75th and 90th percentile are available.

9 For any CIP that is associated with multiple SOCs, the 25th percentile annual wage is
10 calculated by:

11 Step 1: Determining all SOCs associated with the CIP using the O-Net crosswalk available at
12 <http://online.onetcenter.org/crosswalk/CIP/>

13 Step 2: Obtaining from O-Net the employment and annual 25th percentile wage for each SOC
14 associated with the CIP, by entering the SOC at http://www.bls.gov/oes/current/oes_stru.htm

15 Step 3: Multiplying the employment by the annual 25th percentile wage for each SOC associated
16 with the CIP to calculate the TOTAL 25th percentile wages;

17 Step 4: SUMMING the employment in each SOC associated with the CIP;

18 Step 5: SUMMING the TOTAL 25th percentile wages associated with the CIP;

19 Step 6: Dividing the TOTAL 25th percentile wages associated with the CIP by the SUM the
20 employment in each SOC associated with the CIP to arrive at a weighted average 25th percentile
21 annual wage.

22 Step 7: For any classification of instructional program (CIP) that is associated with a single
23 SOC, the 25th percentile annual wage is used to determine the relationship between debt and
24 earnings.

25 To determine the median loan debt incurred by students who completed the program
26 during the three-year period:

27 Step 8: For each of those students, determine the TOTAL amount received from any title IV,
28 HEA loan program, institutional loan, private education loan, and any amount resulting from the
29 use of a retail installment contract or similar instrument that the student is obligated to pay the
30 institution after completing the program.

31 Step 9: ARRANGING the values in Step 8, including values of zero where students did not
32 incur any loan debt, in order from lowest to highest, and selecting the middle value. If there is an
33 even number of values, the median is the average of the two middle values.

1 Step 10: CALCULATING the annual loan payment on the median loan amount in Step 9 based
2 on a 10-year repayment schedule (120 payments) and the current unsubsidized FFEL/Direct
3 Loan interest rate.

4 Step 11: For multiple SOC's, DIVIDING the amount of the annual loan payment in Step 10 by
5 the annual earnings in Step 6, rounding down to the nearest one tenth.

6 Step 12: For a single SOC, DIVIDING the amount of the annual loan payment in Step 10 by the
7 annual earnings in Step 7, rounding down to the nearest one tenth.

Issue Paper #7

Proposed Regulatory Language

Team I – Program Integrity Issues

Issue:	Definition of a credit hour
Statutory cites:	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
Regulatory cites:	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
Summary of issue:	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 their 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. The lack of 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 aid. However, if the Department does decide to define a credit hour for the purposes of Title IV aid, 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 (a) 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 (b) for an undergraduate course of study, 24 semester or trimester hours or 36 quarter credit hours in a course of study that measures academic progress in credit hours or 900 clock hours in a course of study that measures academic progress 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, 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, 8 semester hours, or 12 quarter 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. The regulations were adopted prior to the change in the definition of an academic year for clock-hour programs to provide for a minimum of 26 weeks of instructional time 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 that 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?

Updated information since December meeting:

The regulatory language was revised to address the concerns expressed by the non-Federal negotiators at the last session. We have removed the references to a Carnegie unit, and clarified the measurement of credit hours in terms of work completed by a student. The language was also revised to clarify the alternatives measurements that may be established by an institution to determine equivalencies in cases where the credit hour definition is not appropriate, and that such equivalencies were to be based upon learning outcomes. The proposed language was also revised to clarify the responsibilities of accrediting agencies to review an institution's policies

and procedures for the assignment of credit hours to its programs and courses as well as for the basis for establishing equivalencies when appropriate.

In response to the concerns expressed by the non-Federal negotiators, we added language to the clock- to credit-hour conversion portion of the regulations to clarify the requirement to use clock hours when a limited portion of the program was offered in clock hours due to State or accrediting agency requirements and to require treatment as a clock-hour program if an institution's designated accrediting determines that an institution's policies and procedures, or their application, is deficient. Additional language was also added to allow institutions to use an equivalency in determining the clock to credit hour conversion if an institution's designated accrediting has not identified deficiencies in an institution's policies and procedures, or their application, for determining credit hours for coursework.

1 Draft Regulatory Language

2

3 PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF
4 1965, AS AMENDED

5 §600.2 Definitions.

6 * * * * *

7 Credit hour: (1) Except as provided in 34 CFR 668.8(k) and (l)--

8 (i) A unit of measurement of the quantity of work performed by a student over a defined
9 period of time that consists of one hour of classroom or direct faculty instruction and a minimum
10 of two hours of out of class student work for approximately fifteen weeks for one semester or
11 trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent
12 amount of work over a different amount of time; or

13 (ii) At least a comparable amount of work for other academic activities as established by
14 the institution including laboratory work, internships, practica, studio work, and other academic
15 work leading to the award of credit hours.

16 (2) If the institution offers courses or programs for which the provisions of paragraph
17 (1) of this definition are not appropriate, the institution is responsible for establishing reasonable
18 equivalencies for the amount of academic work required in paragraph (1) of this definition for
19 the credit hours awarded, as represented in intended learning outcomes and verified by evidence
20 of their achievement, and for ensuring the equivalencies are in accordance with the requirements
21 of the institution’s designated accrediting agency for title IV, HEA program participation and
22 State agency, as well as with the requirements of this Chapter.

23 * * * * *

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

2 §602.24 Additional procedures certain institutional accreditors must have.

3 * * * * *

4 (c) Credit-hour policies. The accrediting agency, as part of its review of an institution
5 for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective
6 review and evaluation of the reliability and accuracy of the institution’s assignment of credit
7 hours. The accrediting agency meets this requirement if--

8 (1) It reviews the institution’s

9 (i) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2,
10 that the institution awards for courses and programs; and

11 (ii) The application of the institution’s policies and procedures to all programs and
12 coursework; and

13 (2) Makes a reasonable determination of whether the institution is in compliance with the
14 definition of a credit hour in 34 CFR 600.2.

15 [We would commit to a preamble discussion around the following points:

16 • In reviewing and evaluating an institution’s policies and procedures, an
17 accrediting agency would be expected to use sampling or other methods in the evaluation,
18 sufficient to comply with (2).

19 • The accrediting agency would take such actions that it deems appropriate to
20 address any deficiencies that it identifies at an institution as part of its reviews and evaluations
21 under paragraph (c)(1) of this section, as it does in relation to other deficiencies it may identify,
22 subject to the requirements of the criteria for recognition regarding enforcement of agency
23 requirements.]

1 * * * * *

2 PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3 Subpart A—General

4 §668.8 Eligible program.

5 * * * * *

6 (k) Undergraduate educational program in credit hours. (1) Except as provided in
7 paragraph (k)(2) of this section, ~~if~~ if an institution offers an undergraduate educational program in
8 credit hours, the institution must use the formula contained in paragraph (l) of this section to
9 determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of
10 this section, and the number of credit hours in that educational program for purposes of the title
11 IV, HEA programs, unless—

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

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

18 (A) ~~T~~the institution's degree requires at least two academic years of study; and

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

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

1 (i) Except as provided in paragraph (k)(3) of this section, the program must be measured
2 in clock hours for any purpose including, but not limited to--

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

4 (B) Determining that a graduate of the program qualifies as academically eligible to
5 apply for licensure in or the authorization to practice the occupation that the graduate is intended
6 to pursue;

7 (ii) The credit hours awarded for the program are not in compliance with the definition
8 of a credit hour in 34 CFR 600.2; or

9 (iii) The institution does not provide the clock hours that are the basis for the credit hours
10 awarded for the program or each course in the program and, except as provided in 34 CFR
11 668.4(e), to require attendance in those hours.

12 (3) The requirements of paragraph (k)(2) of this section do not apply to a program if
13 there is a State or Federal approval or licensure requirement that a limited component of the
14 program must include a practicum, internship, or clinical experience component of the program
15 that must include a minimum number clock hours.

16 (l) Formula. (1) Except as provided in paragraph (l)(2) of this section, Ffor purposes of
17 determining whether a program described in paragraph (k) of this section satisfies the
18 requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours
19 in that educational program with regard to the Title IV, HEA programs--

20 (i) A semester hour must include at least 3037.5 clock hours of instruction;

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

22 (iii) A quarter hour must include at least 2025 clock hours of instruction.

1 (2) The institution’s conversions to establish a minimum number of clock hours of
2 instruction per credit may be less than those specified in paragraph (1)(1) of this section, if the
3 institution’s designated accrediting agency for participation in the title IV, HEA programs has
4 not identified any deficiencies with the institution’s policies and procedures for determining the
5 credit hours, as defined in 34 CFR 600.2, that the institution awards for programs and courses, in
6 accordance with 34 CFR 602.24(c), so long as--

7 (i) The institution’s student work outside of class combined with the clock-hours of
8 instruction meet or exceed the numeric requirements in paragraph (1)(1); and

9 (ii)(A) A semester hour must include at least 30 clock hours of instruction;

10 (B) A trimester hour must include at least 30 clock hours of instruction; and

11 (iii) A quarter hour must include at least 20 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 [and 668.43](#)

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?
- Should different limitations be imposed when both institutions are under the same ownership, such as requiring the institution that enrolls a student to offer at least 25% of a program?

Updated information since December meeting:

- No changes to the accreditation regulations are being proposed.
- The proposed changes to §668.5(a) have been revised to place a limitation on written arrangements between for-profit institutions that are under common ownership or control, as those terms are defined in §600.31(b).
- The proposed consumer information requirement has been modified to reflect the need to provide information to prospective students as well as to current students, and the proposed requirement itself is being proposed as a revision to §668.43, with a cross-reference in §668.5.

Draft Regulatory Language:

§ 668.5 Written arrangements to provide educational programs.

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

6 ~~(1) if~~ The educational program offered by the institution that enrolls the student
7 otherwise satisfies the requirements of §668.8; and

8 (2) If the written arrangement is between 2 or more eligible for-profit institutions
9 under common ownership or control, as those terms are defined in §600.31(b), the
10 portion of the educational program provided under the arrangement is 25 percent or less.

11 (b) *Written arrangements for study-abroad.* Under a study abroad program, if an
12 eligible institution enters into a written arrangement with a foreign institution, or an
13 organization acting on behalf of a foreign institution, under which the foreign institution
14 provides part of the educational program of students enrolled in the eligible institution,
15 the Secretary considers that educational program to be an eligible program if it otherwise
16 satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

17 (c) *Written arrangements between an eligible institution and an ineligible*
18 *institution or organization.* If an eligible institution enters into a written arrangement with
19 an institution or organization that is not an eligible institution under which the ineligible
20 institution or organization provides part of the educational program of students enrolled
21 in the eligible institution, the Secretary considers that educational program to be an
22 eligible program if—

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

1 (2) The educational program offered by the institution that enrolls the student
2 otherwise satisfies the requirements of §668.8; and

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

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

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

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

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

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

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

25 (i) Take into account all the hours in which the student enrolls at each institution
26 that apply to the student's degree or certificate when determining the student's enrollment
27 status and cost of attendance; and

28 (ii) Maintain all records regarding the student's eligibility for and receipt of title
29 IV, HEA program funds.

1 (e) Information made available to students. If an institution enters into a written
2 arrangement described in paragraph (a),(b), or (c) of this section, the institution must
3 provide the information described in §668.43(a)(12) to enrolled and prospective students.
4

5 **§668.43 Institutional information.**

6 (a) Institutional information that the institution must make readily available to
7 enrolled and prospective students under this subpart includes, but is not limited to—

8 * * * * *

9 (12) A description of any written arrangement the institution has entered into in
10 accordance with §668.5, including, but not limited to, information on—

11 (i) The portion of the educational program that the institution enrolling the
12 student is not providing;

13 (ii) The name or names of the other institutions or organizations that are
14 providing the portion of the educational program that the institution enrolling the student
15 is not providing;

16 (iii) The method of delivery of the portion of the educational program that the
17 institution enrolling the student is not providing; and

18 (iv) Any additional costs students may incur as the result of enrolling in an
19 educational program that is provided, in part, under the written arrangement.

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 December 7-11, 2009 meetings:

The following are some of the revisions to the verification regulations:

- If information on an applicant's FAFSA changes as a result of verification, the institution or the applicant must submit all changes to the Secretary. If those changes does not change the amount the applicant would receive under a Title IV, HEA Program, the institution can make an interim disbursement. If the institution does not receive the

corrected SAR or ISIR by the established deadlines, the institution must reimburse the program account.

- An applicant that has not filed and is not required to file a tax return can provide a copy of his/her W-2 as acceptable documentation to verify income earned from work.

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Draft Regulatory Language:

Subpart E—Verification and Updating of Student Aid Application Information

§668.51 General.

(a) Scope and purpose. The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs. in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, ACG, National SMART Grant, campus based, Federal Stafford Loan, Federal Direct Stafford/Ford Loan programs.

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

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

§668.52 Definitions.

The following definitions apply to this subpart:

~~Base year means the calendar year preceding the first calendar year of an award year.~~

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

1 ~~(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent~~
2 ~~information; and~~

3
4 ~~(b) Randomly selected student aid applications.~~

5
6 Expected Family Contribution (EFC): The amount which a student and the student's family is
7 expected to contribute towards the student's postsecondary education determined in accordance
8 with section 473 of the HEA.

9
10 Free Application for Federal Student Aid (FAFSA): The student aid application provided for
11 under section 483 of the HEA which is used to determine a student's eligibility for the title IV,
12 HEA programs.

13
14 ~~Institutional student information record as defined in 34 CFR 690.2 and 691.2 for purposes of the~~
15 ~~Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal~~
16 ~~Stafford Loan, and William D. Ford Federal Direct Loan programs.~~

17
18 ~~Student aid application means an application approved by the Secretary and submitted by a~~
19 ~~person to have his or her EFC determined under the Federal Pell Grant, ACG, National SMART~~
20 ~~Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, or William D. Ford Federal~~
21 ~~Direct Loan programs.~~

22
23 Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits
24 to an institution, for purposes of the title IV, HEA programs, that includes an applicant's—

25 _____ (1) Personal identification information;

26 _____ (2) FAFSA data used to determine eligibility for title IV, HEA program aid; and

27 _____ (3) EFC.

28
29 Specified year means:

30 _____ (1) The calendar year preceding the first calendar year of an award year, i.e., the base
31 year; or

1 (2) The year preceding the year described in paragraph (1) of this definition.

2
3 Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the
4 amount of his or her EFC.

5
6 Subsidized student financial assistance programs are title IV, HEA programs for which
7 eligibility is determined on the basis of a student's EFC. These programs include the Federal
8 Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study
9 (FWS), Federal Perkins Loan, Subsidized Stafford Loan and Direct Subsidized Loan.

10
11 Unsubsidized student financial assistance programs are title IV, HEA programs for which
12 eligibility is not based on a student's EFC. These programs include the Unsubsidized Stafford
13 Loan and Direct Unsubsidized Loan.

14
15 §668.53 Policies and procedures.

16
17 (a) An institution shall establish and use written policies and procedures for verifying
18 information contained in a ~~FAFSA student aid application~~ in accordance with the provisions of
19 this subpart. These policies and procedures must include—

20
21 (1) The time period within which an applicant shall provide ~~the any requested~~ documentation;

22
23 (2) The consequences of an applicant's failure to provide ~~requested required~~ documentation
24 within the specified time period;

25
26 (3) The method by which the institution notifies an applicant of the results of its verification if,
27 as a result of verification, the applicant's EFC changes and results in a change in the applicant's
28 eligibility for aid award or loan;

29
30 (4) The procedures the institution will take itself or requires an applicant to follow to correct
31 application FAFSA information determined to be in error; and

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

(b) ~~The An~~ institution's procedures must provide that it shall furnish, in a timely manner, to each applicant whose FAFSA is selected for verification a clear explanation of—

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

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

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

§668.54 Selection of ~~applications-FAFSA information~~ for verification.

(a) General requirements. (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant whose FAFSA information is selected for verification by the Secretary, to verify the information the Secretary specifies pursuant to §668.56.~~to verify application information as specified in this paragraph.~~

~~(2)(i) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in §668.56, except that no institution is required to verify the applications of 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.~~

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

3
4 ~~(32) If an institution has reason to believe that any information on an application used to~~
5 ~~calculate an EFC a FAFSA is inaccurate, it shall require the applicant to verify that the~~
6 ~~information that it has reason to believe is inaccurate.~~

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

13
14 ~~(35) An institution or the Secretary may require an applicant to verify any information included~~
15 ~~on the FAFSA data elements that it the institution or the Secretary specifies.~~

16
17 (b) Exclusions from verification. (1) ~~Unless the institution has reason to believe that the~~
18 ~~information reported by the applicant is incorrect, An institution need not verify an application~~
19 ~~FAFSA information submitted for an award year if--~~

20
21 ~~(i) the An applicant dies; during the award year.~~

22 ~~(ii) An applicant does not receive assistance under the title IV, HEA programs for reasons other~~
23 ~~than his or her failure to verify the information on the FAFSA;~~

24 ~~(iii) An applicant receives only unsubsidized student financial assistance; or~~

25
26 ~~(iv) An applicant who transfers to the institution, had previously completed verification at the~~
27 ~~institution from which he or she transferred, and applies for assistance on the same FAFSA used~~
28 ~~at the previous institution, if the current institution obtains a letter from the previous institution~~
29 ~~stating that it has verified the applicant's information, and providing the transaction number of~~
30 ~~the applicable ISIR~~

31

1 (2) Unless the institution has reason to believe that the information reported by the dependent
2 applicant is incorrect, it need not verify the applicant's parents' FAFSA information if --
3 applications of the following applicants:

4
5 (i) An applicant who is—

6
7 ~~(A) A legal resident of and, in the case of~~
8 ~~a dependent student, whose parents are also legal residents of, the Commonwealth of the~~
9 ~~Northern Mariana Islands, Guam, or American Samoa; or~~

10
11 ~~(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of, the~~
12 ~~Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.~~

13
14 ~~(ii) An applicant who is incarcerated at the time at which verification would occur.~~

15
16 ~~(iii) An applicant who is~~ a dependent student, whose parents are residing in a country other than
17 the United States and cannot be contacted by normal means of communication.

18
19 ~~(iv) An applicant who is an immigrant and who arrived in the United States during either~~
20 ~~calendar year of the award year.~~

21
22 ~~(v ii)~~ An applicant who is a dependent student, whose parents' cannot be located because their
23 contact information address is unknown and cannot be obtained by the applicant.

24
25 ~~(vi iii)~~ An applicant who is a dependent student, both of whose parents are ~~deceased or are~~
26 ~~physically or~~ mentally incapacitated.

27
28 ~~(vii) An applicant who does not receive assistance for reasons other than his or her failure to~~
29 ~~verify the information on the application.~~

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

7
8 (3) Unless the institution has reason to believe that the information reported by the independent
9 applicant is incorrect, An institution it need not ~~require an applicant to document~~ verify a
10 spouse's information ~~or provide a spouse's signature~~ if—

11
12 (i) The spouse is deceased;

13
14 (ii) The spouse is mentally ~~or physically~~ incapacitated;

15
16 (iii) The spouse is residing in a country other than the United States and cannot be contacted by
17 normal means of communication; or

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

21
22 §668.55 Updating information.

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

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

1 (ii) His or her dependency status in accordance with the provisions of paragraph (d) of this
2 section.

3
4 (2) An institution need not ~~require an applicant to verify update~~ the information contained in an
5 applicant's FAFSA his or her application for ~~assistance in~~ an award year if—

6
7 (i) The applicant previously submitted an FAFSA application for ~~assistance for~~ that award year;

8
9 (ii) The applicant updated and verified the information contained in that FAFSA application; and

10
11 (iii) No change in the information to be updated has taken place since the last update.

12
13 ~~(3) If, as a result of a change in the applicant's marital status, the number of family members in~~
14 ~~the applicant's household, the number of those household members attending postsecondary~~
15 ~~education institutions, or the applicant's dependency status changes, the applicant shall not~~
16 ~~update those factors or that status.~~

17
18 (b) If the number of family members in the applicant's household or the number of those
19 household members attending postsecondary educational institutions changes ~~for a reason other~~
20 ~~than a change in the applicant's marital status~~, an applicant who is selected for verification shall
21 be required to update the information contained in his or her ~~application-FAFSA~~ regarding those
22 data items factors so that the information is correct as of the day date the applicant verifies the
23 information.

24
25 ~~(c) If an applicant has received Federal Pell Grant, ACG, National SMART Grant, campus-~~
26 ~~based, Federal Stafford Loan, or Federal Direct Stafford/Ford Loan program assistance for an~~
27 ~~award year, and the applicant subsequently submits another application for assistance under any~~
28 ~~of those programs for that award year, and the applicant is required to update household size and~~
29 ~~number attending postsecondary educational institutions on the subsequent application, the~~
30 ~~institution—~~

1 ~~(1) Is required to take that newly updated information into account when awarding for that award~~
2 ~~year further Federal Pell Grant, ACG, National SMART Grant, or campus-based, assistance or~~
3 ~~certifying a Federal Stafford Loan application, or originating a Direct Subsidized Loan; and~~
4

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

10
11 ~~(d)(1c) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's~~
12 ~~dependency status changes after the applicant applies to have his or her EFC calculated for~~
13 ~~an award year, the applicant shall be required to update the information contained in his or her~~
14 ~~FAFSA regarding those data items so that the information is correct must file a new application~~
15 ~~for that award year reflecting the applicant's new dependency status regardless of whether the~~
16 ~~applicant is selected for verification.~~

17
18 ~~(2) If the institution has previously certified a Federal Stafford Loan application for an applicant,~~
19 ~~the applicant shall not update his or her dependency status on the Federal Stafford Loan~~
20 ~~application. If the institution has previously originated a Direct Subsidized Loan for a borrower,~~
21 ~~the school shall not update the borrower's dependence status on the loan origination record.~~

22
23 §668.56 ~~Items~~ Information to be verified.

24
25 ~~(a) For each award year the Secretary shall publish in the Federal Register the FAFSA~~
26 ~~information that an institution and an applicant may be required to verify.~~

27
28 ~~(b) For each applicant whose FAFSA is selected for verification by the Secretary, the Secretary~~
29 ~~shall specify the information under paragraph (a) of this section that an applicant must verify.~~
30
31

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

5
6 ~~(1) Adjusted gross income (AGI) for the base year if base year data was used in determining~~
7 ~~eligibility, or income earned from work, for a non-tax filer.~~

8
9 ~~(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.~~

10
11 ~~(3)(i) For an applicant who is a dependent student, the aggregate number of family members in~~
12 ~~the household or households of the applicant's parents if—~~

13
14 ~~(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number of~~
15 ~~family members is greater than two; or~~

16
17 ~~(B) The applicant's parents are married to each other and not separated and the aggregate number~~
18 ~~of family members is greater than three.~~

19
20 ~~(ii) For an applicant who is an independent student, the number of family members in the~~
21 ~~household of the applicant if—~~

22
23 ~~(A) The applicant is single, divorced, separated, or widowed and the number of family members~~
24 ~~is greater than one; or~~

25
26 ~~(B) The applicant is married and not separated and the number of family members is greater than~~
27 ~~two.~~

28
29 ~~(4) The number of family members in the household who are enrolled as at least half-time~~
30 ~~students in postsecondary educational institutions if that number is greater than one.~~

1 ~~(5) The following untaxed income and benefits for the base year if base year data was used in~~
2 ~~determining eligibility—~~

3
4 ~~(i) Social Security benefits if the institution has reason to believe that those benefits were~~
5 ~~received and were not reported or were incorrectly reported;~~

6
7 ~~(ii) Child support if the institution has reason to believe that child support was received;~~

8
9 ~~(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or~~
10 ~~Keogh account;~~

11
12 ~~(iv) Interest on tax free bond;~~

13
14 ~~(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe~~
15 ~~that foreign income was received;~~

16
17 ~~(vi) The earned income credit taken on the applicant's tax return; and~~

18
19 ~~(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base year~~
20 ~~which is included on the tax return form, excluding information contained on schedules~~
21 ~~appended to such forms.~~

22
23 ~~(b) If an applicant selected for verification submits an SAR or output document to the institution~~
24 ~~or~~
25 ~~the institution receives the applicant's ISIR, within 90 days of the date the applicant signed his~~
26 ~~or her application, or if an applicant is selected for verification under §668.54(a)(2), the~~
27 ~~institution need not require the applicant to verify—~~

28
29 ~~(1) The number of family members in the household; or~~

1 ~~(2) The number of family members in the household, who are enrolled as at least half-time~~
2 ~~students in postsecondary educational institutions.~~

3
4 ~~(c) If the number of family members in the household or the amount of child support reported by~~
5 ~~an applicant selected for verification is the same as that verified by the institution in the previous~~
6 ~~award year, the institution need not require the applicant to verify that information.~~

7
8 ~~(d) If the family members who are enrolled as at least half-time students in postsecondary~~
9 ~~educational institutions are enrolled at the same institution as the applicant, and the institution~~
10 ~~verifies their enrollment status from its own records, the institution need not require the applicant~~
11 ~~to verify that information.~~

12
13 ~~(e) If the applicant or the applicant's spouse or, in the case of a dependent student, the applicant's~~
14 ~~parents receive untaxed income or benefits from a Federal, State, or local government agency~~
15 ~~determining their eligibility for that income or those benefits by means of a financial needs test,~~
16 ~~the institution need not require the untaxed income and benefits to be verified.~~

17
18 §668.57 Acceptable documentation.

19
20 If an applicant is selected to verify any of the following information, an institution must obtain
21 the specified documentation.

22
23 (a) Adjusted Gross Income (AGI), income earned from work, ~~and or~~ U.S. income tax paid. (1)
24 Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall
25 require an applicant selected for verification ~~to verify of~~ AGI, income earned from work and or
26 U.S. income tax paid by to submitting to it, ~~if relevant~~ —

27
28 (i) A copy of the income tax return or an IRS form which lists tax account information of the
29 applicant, his or her spouse, ~~and or as applicable~~ his or her parents. The copy of the return must
30 include the signature (which need not be an original) of ~~be signed by~~ the filer of the return or ~~by~~
31 of one of the filers of a joint return;

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

(A) The parents filed a joint return; and

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

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

(A) Filed a joint return; and

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

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

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

(3) An institution shall accept, in lieu of an income tax return or an IRS form which lists ~~ing of~~ tax account information ~~of an individual whose income was used in calculating the EFC of an applicant~~, the documentation set forth in paragraph (a)(4) of this section if the individual for the base-specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

1
2 (ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

3
4 (iii) Has requested a copy of the tax return or an IRS form which lists tax account information a
5 Listing of Tax Account Information, and the IRS or a government of a U.S. territory or
6 commonwealth or a foreign central government cannot locate the return or provide an IRS form
7 which a Listing of Tax Account Information.

8
9
10 (4) An institution shall accept—

11
12 (i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that
13 individual certifying that he or she has not filed and nor is not required to file an income tax
14 return for the base-specified year and certifying for that year that individual's—

15
16 (A) Sources of income earned from work as stated on the applicationFAFSA; and

17
18 (B) Amounts of income from each source or provide a copy of his or her IRS Form W-2 for each
19 source listed under paragraph (a)(4)(i)(A) of this section;

20
21 (ii) For an individual described in paragraph (a)(3)(ii) of this section—

22
23 (A) A copy of the IRS Form 4868, “Application for Automatic Extension of Time to File U.S.
24 Individual Income Tax Return,” that the individual filed with the IRS for the base-specified year,
25 or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the
26 individual requested an additional extension of the filing time; and

27
28 (B) A copy of each IRS Form W-2 that the individual received for the specified base-year, or for
29 a self-employed individual, a statement signed by the individual certifying the amount of the
30 AGI adjusted gross income for the specified base-year; and

1 (iii) For an individual described in paragraph (a)(3)(iii) of this section—

2

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

4

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

8

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

13

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

18

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

23

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

30

1 (c) Number of family household members enrolled in eligible postsecondary institutions. (1)
2 ~~Except as provided in §668.56(b), (c), (d), and (e), a~~ An institution shall require an applicant
3 selected for verification to provide documentation of ~~verify annually information included on the~~
4 ~~application regarding~~ the number of household members in the applicant's family enrolled on at
5 least a half-time basis in eligible postsecondary institutions. The ~~institution shall require the~~
6 applicant must submit to the institution ~~to verify the information by submitting~~ a statement
7 signed by the applicant and one of the applicant's parents, if the applicant is a dependent student,
8 or by the applicant if the applicant is an independent student, listing—

9
10 (i) The name of each family member who is or will be attending an eligible postsecondary
11 educational institution as at least a half-time student in the award year;

12
13 (ii) The age of each student; and

14
15 (iii) The name of the institution ~~attended by that~~ each student is or will be attending.

16
17 (2) If the institution has reason to believe that the information included on the ~~application~~
18 FAFSA or statement provided under paragraph (c)(1) of this section regarding the number of
19 family household members enrolled in eligible postsecondary institutions is inaccurate, the
20 institution shall ~~require~~obtain—

21
22 ~~(i) The statement required in paragraph (c)(1) of this section from the individuals described in~~
23 ~~paragraph (c)(1) of this section; and~~

24
25 ~~(ii) A~~ a statement from each institution named by the applicant in response to the requirement of
26 paragraph (c)(1)(iii) of this section that the household member in question is or will be attending
27 the institution on at least a half-time basis, unless--

28
29 ~~(i) †~~The institution the student is attending determines that such a statement is not available
30 because the household member in question has not yet registered at the institution he or she plans
31 to attend or

1
2 ~~(ii) †~~The institution has information ~~itself~~ that the student will be attending the same school as the
3 applicant.

4
5 (d) If an applicant is selected to verify other information specified in the annual Federal Register
6 notice, the applicant must provide the documentation specified in that Federal Register notice.

7 ~~Untaxed income and benefits. An institution shall require an applicant selected for verification to~~
8 ~~verify—~~

9
10 ~~(1) Untaxed income and benefits described in §668.56(a)(5)(iii), (iv), (v), (vi), and (vii) by~~
11 ~~submitting to it—~~

12
13 ~~(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if~~
14 ~~collected under paragraph (a) of this section, or the IRS listing of tax account information if~~
15 ~~collected by the institution to verify adjusted gross income; or~~

16
17 ~~(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant~~
18 ~~individuals certifying that no tax return was filed or is required to be filed and providing the~~
19 ~~sources and amount of untaxed income and benefits specified in §668.56(a)(5) (iii), (iv), (v), and~~
20 ~~(vi);~~

21
22 ~~(2) Social Security benefits if the institution has reason to believe that those benefits were~~
23 ~~received and were not reported, or that the applicant has incorrectly reported Social Security~~
24 ~~benefits received by the applicant, the applicant's parents, or any other children of the applicant's~~
25 ~~parents who are members of the applicant's household, in the case of a dependent student, or by~~
26 ~~the applicant, the applicant's spouse, or the applicant's children in the case of an independent~~
27 ~~student. The applicant shall verify Social Security benefits by submitting a document from the~~
28 ~~Social Security Administration showing the amount of benefits received in the appropriate~~
29 ~~calendar year for the appropriate individuals listed above or, at the institution's option, a~~
30 ~~statement signed by both the applicant and the applicant's parent, in the case of a dependent~~

1 student, or by the applicant, in the case of an independent student, certifying that the amount
2 listed on the applicant's aid application is correct; and

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

5
6 ~~(i) A statement signed by the applicant and one of the applicant's parents in the case of a~~
7 ~~dependent student, or by the applicant in the case of an independent student, certifying the~~
8 ~~amount of child support received; and~~

9
10 ~~(ii) If the institution has reason to believe that the information provided is inaccurate, the~~
11 ~~applicant must verify the amount of child support received by providing a document such as—~~

12
13 ~~(A) a copy of the separation agreement or divorce decree showing the amount of child support to~~
14 ~~be provided;~~

15
16 ~~(B) A statement from the parent providing the child support showing the amount provided; or~~

17
18 ~~(C) Copies of the child support checks or money order receipts.~~

19
20 §668.58 Interim disbursements.

21
22 (a)(1) If an institution has reason to believe that the information included on the ~~application~~
23 ~~FAFSA~~ is inaccurate, until the applicant's ~~verifies or corrects the information~~ is verified and any
24 necessary corrections are made ~~included on his or her application~~, the institution may not—

25
26 (i) Disburse any Federal Pell Grant, FSEOG, or Federal Perkins Loan ~~ACG, National SMART~~
27 ~~Grant, or campus-based p~~Program funds to the applicant;

28
29 (ii) Employ or allow an employer to employ the applicant in its FWS ~~Federal Work Study~~
30 Program;

1 (iii) Certify ~~a Subsidized Stafford Loan or originate a Direct Subsidized Loan, or the applicant's~~
2 ~~Federal Stafford Loan application or process Federal Stafford Loan~~ disburse any such loan
3 proceeds for any previously certified Subsidized Stafford Loan or originated Direct Subsidized
4 Loan~~Federal Stafford Loan application~~; or

5
6 (2) If an institution does not have reason to believe that the information included on ~~an~~
7 ~~application~~ the FAFSA is inaccurate prior to verification, the institution may—

8
9 (i) ~~May w~~ Withhold payment of Federal Pell Grant, Federal Perkins Loan, or FSEOG ACG,
10 National SMART Grant, or campus-based Program funds; or

11
12 (ii)(A) ~~May m~~ Make one disbursement ~~from each of the of any combination of~~ Federal Pell
13 Grant, ~~ACG, National SMART Grant,~~ Federal Perkins Loan, or FSEOG Program funds for the
14 applicant's first payment period of the award year; and

15
16 (B) ~~May e~~ Employ or allow an employer to employ an eligible student under the FWS Federal
17 Work Study Program for the first 60 consecutive days after the student's enrollment in that
18 award year; and

19
20 (iii)(A) ~~May w~~ Withhold certification of the applicant's Federal-Subsidized Stafford Loan
21 application or origination of the applicant's Direct Subsidized Loan; or

22
23 (B) ~~May e~~ Certify the Federal-Subsidized Stafford Loan application or originate the Direct
24 Subsidized Loan provided that the institution does not ~~deliver-disburse Federal Subsidized~~
25 ~~Stafford Loan proceeds or disburse~~ Direct Subsidized Loan proceeds.

26 (3) If an institution determines that changes to the information included on the FAFSA will not
27 change the amount an applicant would receive under a title IV, HEA program, the institution—

28
29 (i) Must ensure necessary corrections are made; and

30
31 (ii) May—

1
2 (A) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or
3 FSEOG Program funds for the applicant's first payment period of the award year;

4
5 (B) Employ or allow an employer to employ an eligible student under the FWS Program for the
6 first 60 consecutive days after the student's enrollment in that award year; or

7
8 (C) Certify the Subsidized Stafford Loan application or originate the Direct Subsidized Loan and
9 disburse the Subsidized Stafford Loan or Direct Subsidized Loan proceeds.

10
11 (b) If an institution chooses to make a disbursement under paragraph (a)(2)(ii)-(A) or (B) of this
12 section, it is liable for any overpayment discovered as a result of the from verification process
13 to the extent that the overpayment is not recovered through reducing subsequent disbursements
14 in the award year from the student.

15
16 ~~(c) An institution may not withhold any Federal Stafford Loan or Direct Loan proceeds from a~~
17 ~~student under paragraph (a)(2) of this section for more than 45 days. If the applicant does not~~
18 ~~complete the verification process within the 45-day period, the institution shall return the~~
19 ~~proceeds to the lender.~~

20
21 ~~(d)(1) If the institution receives Federal Stafford Loan or Direct Loan proceeds in an amount~~
22 ~~which exceeds the student's need for the loan based upon the verified information and the excess~~
23 ~~funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the~~
24 ~~institution shall process the proceeds and advise the lender to reduce the subsequent~~
25 ~~disbursements.~~

26
27 ~~(2) If the institution receives Federal Stafford Loan or Direct Loan proceeds in an amount which~~
28 ~~exceed the student's need for the loan based upon the verified information and the excess funds~~
29 ~~cannot be eliminated in subsequent disbursements for the applicable loan period, the institution~~
30 ~~shall return the excess proceeds to the lender.~~

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§668.59 Consequences of a change in ~~application~~ FAFSA information.

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

~~(1) Except as provided in paragraph (a)(2) of this section,~~ if the information on an applicant's
application FAFSA changes as a result of ~~the verification process,~~ the applicant or the
institution shall submit the required changes to the Secretary. ~~the applicant to resubmit his or her~~
~~application information to the Secretary for corrections if—~~

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

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

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

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

~~(ii) No dollar amount in excess of \$400 as calculated by the net difference between the corrected~~
~~sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the~~
~~uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If~~
~~no Federal Income Tax Return was filed, income earned from work may be used in lieu of~~
~~Adjusted Gross Income (AGI).~~

(b) For the Federal Pell Grant Program an institution shall, ~~ACG, and National SMART Grant~~
~~programs—~~

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

5
6 ~~(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates~~
7 ~~an applicant's EFC because of a change in application information resulting from the verification~~
8 ~~process, the institution shall—~~

9
10 ~~(A) Require the applicant to resubmit his or her application to the Secretary;~~

11
12 ~~(B 1) Recalculate the applicant's Federal Pell Grant, ACG, or National SMART Grant award on~~
13 ~~the basis of the EFC on the corrected SAR or ISIR; and~~

14
15 ~~(C 2) Disburse any additional funds under that award only if the applicant provides the~~
16 ~~institution with thereceives a corrected SAR or ISIR for the student and only to the extent that~~
17 ~~additional funds are payable based on the recalculation; or~~

18
19 ~~(3) Comply with the procedures specified in §668.61(a) if as a result of verification the Federal~~
20 ~~Pell Grant award is reduced.~~

21
22 ~~(ii) If an institution recalculates an applicant's EFC because of a change in application~~
23 ~~information resulting from the verification process and determines that the change in the EFC~~
24 ~~increases the applicant's award, the institution—~~

25
26 ~~(A) May disburse the applicant's Federal Pell, ACG, or National SMART Grant award on~~
27 ~~the basis of the original EFC without requiring the applicant to resubmit his or her application~~
28 ~~information to the Secretary; and~~

29
30 ~~(B) Except as provided in §668.60(b), shall disburse any additional funds under the increased~~
31 ~~award reflecting the new EFC if the institution receives the corrected SAR or ISIR.~~

1
2 (c) For the ~~campus-based, and Federal Stafford Loan or Federal Direct Stafford/Ford Direct Loan~~
3 subsidized student financial assistance programs, excluding the Federal Pell Grant Program—

4
5 ~~(1) Except as provided in paragraph (c)(2) of this section,~~ if the information on ~~an application a~~
6 FAFSA changes as a result of ~~the verification process,~~ the institution shall—

7
8 (i) ~~Recalculate the applicant's EFC; and~~

9
10 ~~(ii) A~~ adjust the applicant's financial aid package ~~for the campus-based, and Federal Stafford~~
11 ~~Loan or Federal Direct Stafford/Ford Direct Loan programs~~ to reflect the new EFC ~~if the new~~
12 ~~EFC results in an overaward of campus-based funds or decreases the applicant's recommended~~
13 ~~loan amount.~~

14
15 ~~(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a~~
16 ~~result of the verification process, the institution finds—~~

17
18 ~~(i) No errors in nondollar items used to calculate the applicant's EFC;~~

19
20 ~~(ii) No dollar amount in excess of \$400 as calculated by the net difference between the corrected~~
21 ~~sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the~~
22 ~~uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If~~
23 ~~no Federal Income Tax Return was filed, income earned from work may be used in lieu of~~
24 ~~Adjusted Gross Income (AGI).~~

25
26 (d)(1) If ~~the institution selects~~ an applicant is selected for verification for an award year who
27 previously received a Direct Subsidized Loan for that award year, and as a result of verification
28 the loan amount is reduced, the institution shall comply with the procedures specified in
29 §668.61(b)(2) and §685.303(e).

1 | (2) If ~~the institution selects~~ an applicant is selected for verification for an award year who
2 | previously received a Subsidized Stafford Loan ~~under the Federal Stafford Loan Program~~ for
3 | that award year, and as a result of verification the loan amount is reduced, the institution shall
4 | comply with the procedures for notifying the borrower and lender specified in §668.61(b)(1) and
5 | §682.604(h).

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

11 |
12 | §668.60 Deadlines for submitting documentation and the consequences of failing to provide
13 | documentation.

14 |
15 | (a) An institution shall require an applicant selected for verification to submit to it, within the
16 | period of time it or the Secretary specifies, the documentations set forth in §668.57 that are
17 | requested by the institution ~~or the Secretary~~.

18 |
19 | (b) For purposes of the subsidized student financial assistance campus-based, Federal Stafford
20 | Loan, Federal Direct Stafford/Ford Loan programs, excluding the Federal Pell Grant Program—

21 |
22 | (1) If an applicant fails to provide the requested documentation within a reasonable time period
23 | established by the institution ~~or by the Secretary~~—

24 |
25 | (i) The institution may not—

26 |
27 | (A) Disburse any additional Federal Perkins Loan; or FSEOG ~~or~~ Program funds to the applicant;

28 |
29 | (B) Employ, cContinue to employ or allow an employer to employ the applicant under FWS;

1 | (C) Certify the applicant's ~~Federal-Subsidized~~ Stafford Loan application or originate the
2 | applicant's Direct Subsidized Loan; or

3 |
4 | (D) ~~Process-Disburse any additional Federal-Subsidized~~ Stafford Loan or Direct Subsidized Loan
5 | ~~Direct Loan~~ proceeds for the applicant;

6 |
7 | ~~(ii) The institution shall return to the lender, or to the Secretary, in the case of a Direct~~
8 | ~~Subsidized Loan, any Federal Stafford Loan or Direct Subsidized Loan proceeds that otherwise~~
9 | ~~would be payable to the applicant; and~~

10 |
11 | ~~(iii ii)~~ The applicant shall repay to the institution any Federal Perkins Loan, or FSEOG, ~~or~~
12 | ~~payments~~ received for that award year;

13 |
14 | (2) If the applicant provides the requested documentation after the time period established by the
15 | institution, the institution may, at its option, ~~award-disburse~~ aid to the applicant notwithstanding
16 | paragraph (b)(1)~~(i)~~ of this section; and

17 |
18 | (3) ~~An institution may not withhold any Federal Stafford Loan proceeds from an applicant under~~
19 | ~~paragraph (b)(1)(i)(D) of this section for more than 45 days. If the applicant does not complete~~
20 | ~~verification within the 45-day period, the institution shall return the Federal Stafford Loan~~
21 | ~~proceeds to the lender.~~

22 | If an institution has received proceeds for a Subsidized Stafford Loan or Direct Subsidized Loan
23 | on behalf of a student, the institution must follow the cash management procedures provided in
24 | §668.167(c) or §668.166(a) or (b), respectively, and return the proceeds to the lender if the
25 | applicant does not complete verification within the time period specified.

26 |
27 | (c) For purposes of the Federal Pell Grant ~~Program, ACG, and National SMART Grant~~
28 | ~~programs~~—

29 |
30 | (1) An applicant may submit a verified SAR to the institution or the institution may receive a
31 | verified ISIR after the applicable deadline specified in 34 CFR 690.61 ~~and 691.61~~ but within an

1 established additional time period set by the Secretary through publication of a notice in the
2 Federal Register. ~~If the institution receives a verified SAR or ISIR during the established~~
3 ~~additional time period, and the EFC on the two SARs or ISIRs are different, payment must be~~
4 ~~based on the higher of the two EFCs.~~

5
6 (2) If the applicant does not provide to the institution the requested documentation and, if
7 necessary, a verified SAR or the institution does not receive a verified ISIR, within the additional
8 time period referenced in paragraph (c)(1) of this section, the applicant—

9
10 (i) Forfeits the Federal Pell Grant, ~~ACG, or National SMART Grant~~ for the award year; and

11
12 (ii) Shall return any Federal Pell Grant, ~~ACG, or National SMART Grant~~ payments previously
13 received for that award year ~~to the Secretary.~~

14
15 ~~(d) The Secretary may determine not to process any subsequent application for Federal Pell~~
16 ~~Grant, ACG, or National SMART Grant program assistance, and an institution, if directed by the~~
17 ~~Secretary, may not process any subsequent application for campus-based, Federal Direct~~
18 ~~Stafford/Ford Loan, or Federal Stafford Loan program assistance of an applicant who has been~~
19 ~~requested to provide documentation until the applicant provides the documentation or the~~
20 ~~Secretary decides that there is no longer a need for the documentation.~~

21
22 ~~(ed)~~ If an applicant selected for verification for an award year dies before the deadline for
23 completing ~~the~~ verification ~~process~~ without completing that process, ~~and the deadline is in the~~
24 ~~subsequent award year,~~ the institution may not—

25
26 (1) Make any further disbursements on behalf of that applicant;

27
28 (2) Certify that applicant's Federal Subsidized Stafford Loan application, originate that
29 applicant's Direct Subsidized Loan, or ~~process~~ disburse that applicant's Federal Subsidized
30 Stafford Loan or Direct Subsidized Loan proceeds; or

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

2
3 §668.61 Recovery of funds.

4
5 (a) If an institution discovers, as a result of ~~the verification process~~, that an applicant received
6 ~~under §668.58(a)(2)(ii)(A)~~ more financial aid than the applicant was eligible to receive,
7 including an interim disbursement under §668.58(a)(2)(ii)(A), the institution shall eliminate the
8 overpayment by—

9
10 (1) Adjusting subsequent financial aid payments disbursements in the award year in which the
11 overpayment occurred; or

12
13 (2) Reimbursing the appropriate program account by—

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

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

20
21 (A) Sixty days after the applicant's last day of attendance.

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

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

1 choose to return promptly to the lender only the portion of the disbursement for which the
2 student is ineligible. In either case, the institution shall provide the lender with a written
3 statement describing the reason for the returned loan funds.

4

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

9

10 (c) If an institution disbursed subsidized student financial assistance to an applicant under
11 §668.58(a)(3), and did not receive the SAR or ISIR reflecting corrections within the deadlines
12 established under §668.60, the institution must reimburse the program account by making
13 restitution from its own funds.

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.

Updated information since December meeting:

The revised draft regulatory language includes a more structured approach to the requirements for institutions to monitor a student’s progress. The language incorporates the proposed definitions and describes the required components of an institutional satisfactory academic progress policy. It outlines provisions for institutions that monitor progress at the end of each payment period and for those that monitor progress annually or less frequently than at the end of each payment period. The regulations provide greater flexibility for institutions that monitor progress more frequently than annually.

The proposed regulations would replace the current §668.34 and resulted in corresponding changes to the regulatory references in §668.32 and §668.16(e).

1 Draft Regulatory Language

2 **§668.16 Standards of administrative capability.**

3 (e) For purposes of determining student eligibility for assistance under a Title IV, HEA
4 program, establishes, publishes, and applies reasonable standards for measuring whether
5 an otherwise eligible student is maintaining satisfactory progress in his or her educational
6 program. The Secretary considers an institution's standards to be reasonable if the
7 standards are in accordance with the provisions specified in §668.34.

8 ~~(1) Are the same as or stricter than the institution's standards for a student enrolled in the~~
9 ~~same educational program who is not receiving assistance under a Title IV, HEA~~
10 ~~program;~~

11 ~~(2) Include the following elements:~~

12 ~~(i) A qualitative component which consists of grades (provided that the standards meet or~~
13 ~~exceed the requirements of §668.34), work projects completed, or comparable factors that~~
14 ~~are measurable against a norm.~~

15 ~~(ii) A quantitative component that consists of a maximum timeframe in which a student~~
16 ~~must complete his or her educational program. The timeframe must—~~

17 ~~(A) For an undergraduate program, be no longer than 150 percent of the published length~~
18 ~~of the educational program measured in academic years, terms, credit hours attempted,~~
19 ~~clock hours completed, etc. as appropriate;~~

20 ~~(B) Be divided into increments, not to exceed the lesser of one academic year or one-half~~
21 ~~the published length of the educational program;~~

22 ~~(C) Include a schedule established by the institution designating the minimum percentage~~
23 ~~or amount of work that a student must successfully complete at the end of each increment~~
24 ~~to complete his or her educational program within the maximum timeframe; and~~

- 1 ~~(D) Include specific policies defining the effect of course incompletes, withdrawals,~~
2 ~~repetitions, and noncredit remedial courses on satisfactory progress;~~
- 3 ~~(3) Provide for consistent application of standards to all students within categories of~~
4 ~~students, e.g., full-time, part-time, undergraduate, and graduate students, and educational~~
5 ~~programs established by the institution;~~
- 6 ~~(4) Provide for a determination at the end of each increment by the institution as to~~
7 ~~whether the student has met the qualitative and quantitative components of the standards~~
8 ~~(as provided for in paragraphs (e)(2)(i) and (ii) of this section);~~
- 9 ~~(5) Provide specific procedures under which a student may appeal a determination that~~
10 ~~the student is not making satisfactory progress; and~~
- 11 ~~(6) Provide specific procedures for a student to re-establish that he or she is maintaining~~
12 ~~satisfactory progress.~~

13 **§668.32 Student eligibility—general.**

- 14 (f) Maintains satisfactory progress in his or her course of study according to the
15 institution's published standards of satisfactory progress that satisfy the provisions of
16 §668.16(e), and, if applicable, the provisions of §668.34;

17 **§668.34 Satisfactory progress**

- 18 ~~(a) If a student is enrolled in a program of study of more than two academic years, to be~~
19 ~~eligible to receive title IV, HEA program assistance after the second year, in addition to~~
20 ~~satisfying the requirements contained in §668.32(f), the student must be making~~
21 ~~satisfactory under the provisions of paragraphs (b), (c) and (d) of this section.~~
- 22 ~~(b) A student is making satisfactory progress if, at the end of the second year, the student~~
23 ~~has a grade point average of at least a “C” or its equivalent, or has academic standing~~
24 ~~consistent with the institution's requirements for graduation.~~

1 ~~(c) An institution may find that a student is making satisfactory progress even though the~~
2 ~~student does not satisfy the requirements in paragraph (b) of this section, if the institution~~
3 ~~determines that the student's failure to meet those requirements is based upon—~~

4 ~~(1) The death of a relative of the student;~~

5 ~~(2) An injury or illness of the student; or~~

6 ~~(3) Other special circumstances.~~

7 ~~(d) If a student is not making satisfactory progress at the end of the second year, but at~~
8 ~~the end of a subsequent grading period comes into compliance with the institution's~~
9 ~~requirements for graduation, the institution may consider the student as making~~
10 ~~satisfactory progress beginning with the next grading period.~~

11 ~~(e) At a minimum, an institution must review a student's academic progress at the end of~~
12 ~~each year.~~

13 (a) Satisfactory academic progress policy. An institution must establish a
14 reasonable satisfactory academic progress policy for determining whether an otherwise
15 eligible student is making satisfactory progress in his or her educational program and
16 may receive assistance under the title IV, HEA programs. The Secretary considers the
17 institution's policy to be reasonable if--

18 (1) The policy is at least as strict as the policy the institution applies to a student
19 who is not receiving assistance under the title IV, HEA programs;

20 (2) The policy provides for consistent application of standards to all students
21 within categories of students, e.g., full-time, part-time, undergraduate, and graduate
22 students, and educational programs established by the institution;

23 (3) The policy provides that a student's academic progress is evaluated--

24 (i) At the end of each payment period if the educational program is either one
25 academic year in length or shorter than an academic year; or

26 (ii) At the end of each payment period or at least annually for all other
27 educational programs;

28 (4)(i) The policy specifies the grade point average (GPA) that a student must
29 achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a
30 comparable assessment measured against a norm; and

1 (ii) If a student is enrolled in an educational program of more than two academic
2 years, the policy specifies that at the end of the second academic year, the student must
3 have a GPA of at least a “C” or its equivalent, or have academic standing consistent with
4 the institution’s requirements for graduation;

5 (5)(i) The policy specifies the pace at which a student must progress through his
6 or her educational program to ensure that the student will complete the program within
7 the maximum timeframe, as provided in paragraph (a)(5)(iii) of this section, and provides
8 for measurement at each evaluation;

9 (ii) An institution calculates the pace at which the student is progressing by
10 dividing the cumulative number of hours the student has successfully completed by the
11 cumulative number of hours the student has attempted. In making this calculation, the
12 institution is not required to include remedial courses;

13 (iii) For the purpose of this section, the maximum timeframe means--

14 (A) For an undergraduate program, a period that is no longer than 150 percent of
15 the published length of the educational program, as measured in credit hours or scheduled
16 clock hours; and

17 (B) For a graduate program, a period defined by the institution that is based on
18 the length of the educational program;

19 (6) The policy describes how a student’s GPA and pace of completion are
20 affected by course incompletes, withdrawals, or repetitions, or transfers of credit from
21 other institutions. Credit hours from another institution which are accepted toward the
22 student’s educational program must count as both attempted and completed hours;

23 (7) Except as provided in paragraphs (c) and (d) of this section, the policy
24 provides that, at the time of each evaluation, a student who has not achieved the required
25 GPA, or who is not successfully completing his or her educational program at the
26 required pace, is no longer eligible to receive assistance under the title IV, HEA
27 programs;

28 (8) If the institution places students on financial aid warning, or on financial aid
29 probation, as defined in paragraph (b) of this section, the policy describes such
30 provisions; and

1 (9) If the institution permits a student to appeal a determination by the institution
2 that he or she is not making satisfactory progress, the policy describes how the student
3 may re-establish his or her eligibility to receive assistance under the title IV, HEA
4 programs.

5 (b) Definitions. The following definitions apply to the terms used in this section:

6 Appeal. Appeal means a process by which a student who is not meeting the
7 institution's standards, petitions the institution for reconsideration of the student's
8 eligibility for title IV, HEA program assistance. The student must submit information
9 regarding why the student failed to make satisfactory academic progress, and what has
10 changed in the student's situation that will allow the student to demonstrate satisfactory
11 progress at the next evaluation. The student may appeal based upon the death of a
12 relative, an injury or illness of the student, or other special circumstances.

13 Financial aid probation. Financial aid probation means a designated status
14 assigned to a student who fails to make satisfactory academic progress and who has
15 appealed and has had eligibility for aid reinstated. During this period, the institution may
16 require the student to fulfill specific terms and conditions such as taking a reduced course
17 load or enrolling in specific courses. A student on financial aid probation may receive
18 title IV, HEA program funds for one payment period. At the end of one payment period
19 on financial aid probation, the student must meet the institution's satisfactory academic
20 progress standards or meet the requirements of the student's academic plan to qualify for
21 further title IV, HEA program funds.

22 Financial aid warning. Financial aid warning means a designated status assigned
23 to a student who fails to make satisfactory academic progress at an institution that
24 evaluates academic progress at the end of each payment period. A student on financial
25 aid warning may continue to receive assistance under the title IV, HEA programs for one
26 payment period despite a determination that the student is not making satisfactory
27 academic progress. Financial aid warning status may be granted without an appeal or
28 other action by the student.

29 (c) Institutions that evaluate satisfactory academic progress at the end of each
30 payment period.

1 (1) An institution that evaluates satisfactory academic progress at the end of each
2 payment period and determines that a student is not making progress under its policy may
3 nevertheless disburse title IV, HEA program funds to the student under the provisions of
4 paragraph (c)(2), (3), or (4) of this section.

5 (2) For the payment period following the payment period in which the student did
6 not make satisfactory academic progress, the institution may- -

7 (i) Place the student on financial aid warning, and disburse title IV, HEA
8 program funds to the student; or

9 (ii) Place a student directly on financial aid probation, following the procedures
10 outlined in paragraphs (d)(2) of this section and disburse title IV, HEA program funds to
11 the student.

12 (3) For the payment period following a payment period during which a student
13 was on financial aid warning, the institution may place the student on financial aid
14 probation, and disburse title IV, HEA program funds to the student if--

15 (i) The institution evaluates the student's progress and determines that student did
16 not make satisfactory academic progress during the payment period the student was on
17 financial aid warning;

18 (ii) The student appeals the determination; and

19 (iii) (A) The institution determines that the student should be able to meet the
20 institution's satisfactory academic progress standards by the end of the subsequent
21 payment period; or

22 (B) The institution develops an academic plan for the student that, if followed,
23 will ensure that the student is able to meet the institution's satisfactory academic progress
24 standards by a specific point in time.

25 (4) A student on financial aid probation for a payment period may not receive
26 title IV, HEA program funds for the subsequent payment period unless the student makes
27 satisfactory academic progress or the institution determines that the student met the
28 requirements specified by the institution in the academic plan for the student

29 (d) *Institutions that evaluate satisfactory academic progress annually, or less*
30 *frequently than at the end of each payment period.*

1 (1) An institution that evaluates satisfactory academic progress annually or less
2 frequently than at the end of each payment period and determines that a student is not
3 making progress under its policy may nevertheless disburse title IV, HEA program funds
4 to the student under the provisions of paragraph (d)(2) or (3) of this section.

5 (2) The institution may place the student on financial aid probation and may
6 disburse title IV, HEA program funds to the student for the subsequent payment period
7 if--

8 (i) The institution evaluates the student and determines that student is not making
9 satisfactory academic progress;

10 (ii) The student appeals the determination; and

11 (iii)(A) The institution determines that the student should be able to be make
12 satisfactory progress during the subsequent payment period and meet the institution's
13 satisfactory academic progress standards at the end of that payment period; or

14 (B) The institution develops an academic plan for the student that, if followed,
15 will ensure that the student is able to meet the institution's satisfactory academic progress
16 standards by a specific point in time.

17 (3) A student on financial aid probation for a payment period may not receive
18 title IV, HEA program funds for the subsequent payment period unless the student makes
19 satisfactory academic progress or the institution determines that the student met the
20 requirements specified by the institution in the academic plan for the student.

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?

Updated information since December meeting:

- No changes are being proposed.
- Tentative agreement was reached on this issue.

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.

Updated information since December meeting:

We considered the concerns of the nonfederal negotiators expressed during the last meeting, however no significant policy changes were made. The proposed language has been simplified to clarify that all programs are to be treated same when determining whether a student has withdrawn.

1 **Draft regulatory language**

2 §668.22 Treatment of title IV funds when a student withdraws.

3 (a) General. (1) When a recipient of title IV grant or loan assistance withdraws from an
4 institution during a payment period or period of enrollment in which the recipient began
5 attendance, the institution must determine the amount of title IV grant or loan assistance that the
6 student earned as of the student's withdrawal date in accordance with paragraph (e) of this
7 section

8 (2) A student is considered to have withdrawn from a payment period or period of
9 enrollment if--

10 (i) In the case of a program that is measured in credit hours, the student does not
11 complete all the days in the payment period or period of enrollment that the student was
12 scheduled to complete prior to withdrawing; and

13 (ii) In the case of a program that is measured in clock hours, the student does not
14 complete all the clock hours in the payment period or period of enrollment that the student was
15 scheduled to complete prior to withdrawing.

16 (32) For purposes of this section, “title IV grant or loan assistance” includes only
17 assistance from the Federal Perkins Loan, Direct Loan, FFEL, Federal Pell Grant, Academic
18 Competitiveness Grant, National SMART Grant, TEACH Grant, and FSEOG programs, not
19 including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching
20 share by the individual recipient method or the aggregate method.

21 Note: The rest of paragraph (a) would need to be renumbered.

22 * * * * *

23 (f) * * *

24 * * * * *

25 (2)(i) The total number of calendar days in a payment period or period of enrollment
26 includes all days within the period that the student was scheduled to complete prior to
27 withdrawing, except that scheduled breaks of at least five consecutive days are excluded from
28 the total number of calendar days in a payment period or period of enrollment and the number of
29 calendar days completed in that period.

30 (ii) The total number of calendar days in a payment period or period of enrollment does
31 not include days in which the student was on an approved leave of absence.

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.

Updated information since December meeting:

- In some provisions we clarified that attendance records must be used not only if the institution is required to take attendance but also if it requires that attendance be taken.
- We added two provisions based on current policy concerning instances where the withdrawal by a student in attendance at the end of the limited period who subsequently stops attending during the payment period and instances where an institution is required to take attendance, or requires that attendance be taken, on only one specified day to meet a census reporting requirement.

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) has a
16 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 that can only be met by taking
19 attendance or a comparable process, including but not limited to, requiring that students in a
20 program demonstrate attendance in the classes of that program, or a portion of that program, and
21 compliance with that requirement can only be determined by taking of attendance or a
22 comparable process.

23 (ii) If, in accordance with paragraph (b) (3)(i) of this section, ~~an outside entity requires~~ an
24 institution is required to take attendance, or requires that attendance be taken, for only some
25 students, the institution must use its attendance records to determine a withdrawal date in
26 accordance with paragraph (b)(1) of this section for those students.

27 (iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to
28 take attendance, or requires that attendance be taken for a limited period, the institution must use

29 its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of
30 this section for that limited period.

31 (B) A student in attendance at the end of the limited period identified in paragraph
32 (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be
33 treated as a student for whom the institution was not required to take attendance.

34 (iv) If an institution is required to take attendance, or requires that attendance be taken, on
35 only one specified day to meet a census reporting requirement, the institution is not considered to
36 take attendance.

Issue Paper #14

Team I – Program Integrity Issues

Issue:	Disbursements of Title IV funds
Statutory cites:	HEA sections: 401(a); 420M(b); 428G; 452(c)
Regulatory cites:	§668.164(e); §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?

Updated information since December meeting:

- We have revised the draft regulations to provide that, not later than the seventh day of a payment period, an institution must provide to a student from an expected title IV, HEA program credit balance, the lesser of the credit balance or an amount equal to the allowance for books and supplies in the student’s cost of attendance for the payment period.
- If the institution provides a direct payment to the student of the expected credit balance, the student, but not the institution, is liable for any overpayment.
- We have added a definition of “payment data” to the draft regulations for the Direct Loan and TEACH Grant programs.
-

Draft Language

1 PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2 Subpart K—Cash Management

3 * * * * *

4 §668.164 Disbursing funds.

5 * * * * *

6 (i) Payments for books and supplies. (1)(i) For any payment period during which an
7 eligible student is expected to have a credit balance under paragraph (e) of this section, an
8 institution must pay directly to the student no later than the seventh day of the payment period,
9 the lesser of the expected credit balance, or an amount equal to the allowance for books and
10 supplies used in determining the student’s cost of attendance for the payment period, unless the
11 institution provides another way for the student to purchase books and supplies for the payment
12 period before that date such as using vouchers at a campus bookstore.

13 (ii) Upon request of a student, the institution must pay the amount determined under
14 paragraph (i)(1)(i) of this section directly to the student.

15 (2) Notwithstanding the provisions in §668.21(a) or (b), the institution is not responsible
16 for returning, or otherwise liable for, any title IV, HEA program funds disbursed directly to a

1 student under this paragraph if the student does not begin attendance in the payment period.
2 However, as provided under §668.21(a)(2)(ii), the institution must immediately notify the
3 Secretary for a Direct loan or FFEL Program lender when it becomes aware that the student has
4 not begun attendance.

5 PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

6 * * * * *

7 §685.102 Definitions.

8 * * * * *

9 (b) * * *

10 Payment Data: An electronic record that is provided to the Secretary by an institution
11 showing student disbursement information.

12 * * * * *

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
16 is 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
19 ~~A 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~~
21 ~~days following the date of the initial disbursement. The school must submit subsequent~~
22 ~~disbursement records, including adjustment and cancellation records, to the Secretary no later~~
23 ~~than 30 days following the date the disbursement, adjustment, or cancellation is made.~~

24 (2) A school that participates under school origination option 1 or standard origination
25 must submit the initial disbursement record for a loan to the Secretary no later than 30 days
26 following the date of the initial disbursement. The school must submit subsequent disbursement

1 records, including adjustment and cancellation records, to the Secretary no later than 30 days
2 following the date the disbursement, adjustment, or cancellation is made.

3

4 PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER
5 EDUCATION (TEACH) GRANT PROGRAM

6 * * * * *

7 §685.2 Definitions.

8 * * * * *

9 (d) * * *

10 Payment Data: An electronic record that is provided to the Secretary by an institution
11 showing student disbursement information.

12 * * * * *

13 **§686.37 Institutional reporting requirements.**

14 (a) An institution must provide to the Secretary information about each TEACH Grant
15 recipient that includes but is not limited to—

16 (1) The student's eligibility for a TEACH Grant, as determined in accordance with
17 §§686.11 and 686.31;

18 (2) The student's TEACH Grant amounts; and

19 (3) The anticipated and actual disbursement date or dates and disbursement amounts of
20 the TEACH Grant funds.

21 (b) The Secretary accepts a student's Payment Data that is submitted in accordance with
22 procedures established through publication in the Federal Register, and that contains information
23 the Secretary considers to be accurate in light of other available information including that
24 previously provided by the student and the institution.~~An institution must submit the initial~~
25 ~~disbursement record for a TEACH Grant to the Secretary no later than 30 days following the date~~
26 ~~of the initial disbursement. The institution must submit subsequent disbursement records,~~

1 ~~including adjustment and cancellation records, to the Secretary no later than 30 days following~~
2 ~~the date the disbursement, adjustment, or cancellation is made.~~

3