DRAFT NEGOTIATED RULEMAKING AGENDA – REGULATORY RELIEF --12-14-2001

Possible Pre-Negotiation Consensus Items

Fed Up #	Regulation	Statutory Authority	Suggested Regulatory Changes	Advocate's Rationale for Change	ED Notes
4	**Eligible Lender: 682.200 (b)**		Amend section (2)(ii) of the definition of lender in 682.200(b) by adding the following: "For purposes of this subsection, loans held in trust are not considered part of the institution's consumer credit function."	The HEA states that a lender, as defined in 435 (d)(1)(A), "does not have as part of its primary consumer credit function the making or holding of loans made to students under this part…". Section 682.200(b) of the regulation states, "The phrase does not have as its primary consumer credit function the making of loans to students under this part." In section 435(d) of the HEA states that the lender does not, or in the case of a bank holding company the company's wholly owned subsidiaries as a group, do not at any time, hold FFELP loans that total more than one-half of the lender's or subsidiaries' combined credit loan portfolio, including home mortgages held by the subsidiaries. Some originators and holders make loans through a trustee arrangement. The trust department and consumer credit departments are separate entities and are subject to different reviews and oversight. We propose that the regulations clarify that loans held in trust are not part of the consumer credit function. We want the conference report language codified in regulations. The Conference Report for the 1998 HEA Amendments states: • The House bill, but not the Senate bill requires all loans made or held as trustee, including consumer loans, to be considered when determining the primary consumer credit function. • The House recedes. The conferees urge the Department when interpreting the rule relating to a lending institutions primary function, to consider the role of trust departments in today's banking environment. In particular, the Department is encouraged to consider the distinction between loans made and held by a lender that are clearly part of the institution's primary consumer function, and loans that are merely held in trust on behalf of another originating lender and are clearly not part of the institution's primary consumer function.	Accepted. ED will develop language.

13	**Perkins** **Promissory Notes** **674.42(a)(10)**		The regulation now requires an institution to provide a copy of the promissory note at the exit interview. Offer institutions the option of providing another copy of the promissory note to all borrowers during the exit interview or only providing another copy of the promissory note to a borrower when the borrower makes such a request. Amend the section as follows: (10) A copy of the borrower's signed promissory note if requested by the borrower.	In addition to extensive information in other forms, institutions are currently required to provide copies of the promissory note to students at various points in the process: one when the note is signed and one at the exit interview. We believe the benefit of this is questionable and recommend offering the student the opportunity to request a copy at the exit interview. This recommendation does not diminish the substance of the information that borrowers would receive, which includes outstanding balance, payment requirements, and a borrower's rights and responsibilities.	Accepted. Current regs provide flexibliity. May only need policy clarification.
15	**Perkins Litigation: 674.46(a)(1)**		Part 674.46(a)(1) should be amended as follows: (a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine ~~at least annually~~ whether— (i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, National Direct and National Defense Student Loans held by that institution, is more than $1,000 ~~$200~~;	Section 674.46(a)(1) provides a laundry list of conditions that must be met before the institution will be required to sue the borrower for the amount of a defaulted loan. One condition is that the institutions must perform an annual review of accounts that are in the default, which is burdensome and time consuming. In order to eliminate this burden, the review period should be based on the institution's discretion. In addition, the amount pertaining to the balance of a loan that the institution of higher education must review and determine if it must sue the borrower must be increased. The amount of $200 is outdated, as it costs far more than $200 to litigate a case in court. Therefore, we suggest that the amount be increased from $200 to $1,000.	*Tentative -- Possible Budget Implications*
16	**Perkins** **Litigation:** **674.46(a)(2)**		Permit (but do not require) litigation if the borrower owes more than $200 and meets certain other conditions. Amend section 674.46(a)(2) as follows: (2) The institution may sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are not met.	Since institutions of higher education are required to deposit capital into the Perkins Loan fund, they are motivated to locate borrowers and collect loan funds, as well as to initiate litigation when appropriate. We do not believe that litigation should be mandated. Given the $200 threshold, it may cost the institution more to litigate than to write-off the loan. Institutions should be given the discretion to determine whether litigation is cost effective and appropriate as a collection tool.	Accepted. ED will develop language.

20	**Perkins** **Write-offs** **CFR 674.47(h)**		Increase maximum loan write-off amount from $5 to $25. Amend section 674.47(h) as follows: *(h) Write-offs of accounts less than $25*. (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than $25, including outstanding principal, accrued interest, collection costs, and late charges.	Current regulations permit institutions to assign loan accounts over $25 to the Department and to write-off loans of less than $5, but accounts between those amounts are not provided for. Given that the current assignment process requires significant documentation, we do not recommend assigning loans in the $5-25 category, but rather believe that schools should be permitted to write them off.	Accepted. ED will develop language.
21	**Perkins** **Credit Bureau Reporting** **674.16(i)(1), 674.43(f), 674.45(a)(i)**		Require credit bureau reporting of delinquent loans only "if the school has not already done so."	Schools are required to report loans to at least one national credit bureau at the time of disbursement and to continue reporting until the loan is paid in full. Schools are also required to take certain collection/billing actions prior to reporting a borrower's delinquency to the credit bureau. Obviously, if schools have complied with the original credit bureau reporting requirement, they cannot also postpone reporting the delinquency until after taking the collection/billing actions. The suggested change eliminates the tension between the various regulatory sections.	Accepted. Can be done with policy clarification
25	**Stafford Loans** **Repayment - First Payment Due Date** **682.209(a)**		Amend the regulations to allow the first payment due on all loan types to be within 60 days from the repayment begin date.	The first payment on a direct consolidation, PLUS and Stafford and a FFELP consolidation and PLUS loan is due within 60 days of the date the loan is made. The first payment on a FFELP Stafford Loan is due 45 days after repayment begins or resumes. To afford the borrower a "bit more time" to make the first payment on their loans and to standardize the first payment due date on all loans, we propose a first payment date of within 60 days for all loan types. This also provides parity for this provision between FFELP and the direct loan program.	Accepted. ED will develop language.
27	**Repayment – Borrower Repayment Terms** **682.209 (a)(8)(iv)**		Delete the "written notice" requirement	This regulation allows a borrower to request a repayment term of less than 5 years. This request need not be in writing. However, after the borrower is in repayment, if the borrower wants to extend the 5-year period, it must be done in writing. This creates a level of unnecessary complexity for the borrower. Making this change would coordinate the repayment standards in this section of the regulations. Since the borrower is able to request a yearly	Accepted. ED will develop language.

				change in repayment plans and is not required to put such a request "in writing", the regulations are treating borrowers inconsistently.	
33	**Anticipated Graduation date: 682.209 (a)(3)(i)(B) &(C)**		Eliminate the requirement that a lender change the anticipated graduation date (AGD) or separation date when the date provided by the school is in the same month and year as a previously provided date, regardless of whether the lender has disclosed repayment terms to the borrower.	Regulation and current ED guidance, in DCL 96-L-186, Q&A #18, do not require the lender to change the AGD/separation date if the lender has already disclosed repayment terms to the borrower. However, if no disclosure has been sent, the lender must make adjustments to the AGD/separation date even when the new dates are within the same month/year. This required adjustment is administratively burdensome to lenders and serves no useful purpose.	Accepted. ED will develop language.
52	**Consolidation: Disability Discharge on Consolidation Loans 682.402(c)(1) (ii) and (iv)**		Revise the regulations to allow for a partial discharge of a consolidation loan in the case of a borrower's total and permanent disability.	Consistency of benefit for borrowers eligible for discharge: Currently, regulations provide for the discharge of a loan due to a closed school or false certification circumstance, even if that loan has subsequently been consolidated along with other loans which are not similarly eligible for this type of discharge. However, for the case of a total and permanent disability discharge, the regulations preclude the discharge of the loan unless all of the underlying loans are also eligible for the discharge. This situation is particularly onerous for the disabled borrower, and serves to punish the individual who would have received the benefit of this discharge on the applicable loan(s) had they simply not been consolidated.	Accepted. Should also extend to death of borrower. ED will develop language.
ED	**Federal Work Study 675.21(b)**		Clarify provision of student services to provide proprietary institutions more flexibility in establishing work-study jobs on campus.	Current regulations based on definition of student services in 675.2 allow work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services. However, 668.21 limits this to on-campus employment that to the maximum extent possible, complements and reinforces the educational program or vocational goals of the student.	ED will develop language for committee consideration.
ED	**Transfer of Perkins Fund** **674.17**		Codify existing practice of assignment of Perkins Fund to ED, not other institutions if an institution ends participation in Perkins Loan program.	Since the early 1990's institutions withdrawing from Perkins program have assigned their portfolio to ED. However, regulations still note that these loans are assigned to other institutions. Current regulations cause confusion by referring and need to reflect current practices.	ED will develop language for committee consideration.
ED	**Economic Hardship for Perkins Borrowers** **674.34(e)(10)**		Amend 674.34(e)(10) to allow schools to use a repayment term shorter than 10 year when determining a borrower's eligibility for economic hardship.	Current regulations are punitive for borrowers who have a repayment term shorter than 10 years (ie., school exercised minimum monthly payment option).	ED will develop language for committee consideration.

ED	**Assignment of Perkins Loans** **674.50(e)(4)**		Delete 674.50(e)(4)	This regulation contradicts 674.61.	ED will develop language for committee consideration.
ED	**Assignment of Perkins Loans** **674.50(g)(2)**		Amend 674.50(g)(2) to be consistent with 674.13	Current provisions are inconsistent.	ED will develop language for committee consideration.

PROPOSED ISSUES FOR NEGOTIATION

	Regulation	Statutory Authority	Suggested Regulatory Changes	Advocate's Rationale for Change	ED Notes
5	**Electronic Process** **General**		The Department of Education should provide broad authority permitting electronic transmission of authorizations whenever the regulations state that an authorization should be provided "in writing." When signatures are required, i.e., FAFSA, promissory note, acceptances or authorizations by the student or parent, these should be permitted to be acknowledged electronically. If signatures are required for enforceability of a document, such as a promissory note, electronic signatures should be permitted.	Despite a few changes made last year, current regulations still contain a number of instances that require students to be notified in writing either by the institution or lender in the case of loans. In addition, students or parents are often required to provide an authorization in writing with a "wet signature." For instance, institutions are required to provide notices to students of the amount of funds that the student or parent can expect to receive under Title IV. Students or parents must provide written authorizations for Title IV funds to be used for other institutional charges in addition to tuition and fees, and students must make written requests for deferments, cancellation, or forbearance. Electronic transmissions have become common modes of delivering and transmitting information. Students have come to expect electronic communications as a normal practice. Institutions that participate in Title IV must meet certain minimum technical specifications in order to use the Department of Education's electronic processes. President Clinton signed into law in June 2000 the Electronic Signatures in Global and National Commerce Act, which removed the legal barriers to acceptance of electronic signatures. Further, the Government Paperwork Reduction Act (GPEA) signed into law in October 1998, requires Federal agencies to allow individuals and entities that deal with the agencies the option of submitting information or transact with the agency electronically, when practicable.	Loan and School Committees *Will need to identfiy specific references in regulations*
6	**Electronic Process - 675.19(b)(2)(i)**		Permit the use of electronic time systems as alternatives to paper time records signed by a supervisor for FCWS.	The regulations require that the student's supervisor sign the time record. This requires a paper record that does not permit institutions to use electronic time systems that are in general use in the workplace. Institutions that have been permitted to use electronic systems for this purpose (under the Experimental Sites authority) report that their reporting accuracy has increased, therefore, schools should be able to use paper or electronic systems.	*Already Permitted under last revisions. Can Clarify Further.*

7	**Electronic process – administrative:** **668.165(a)(3)(ii)**		Modify receipt requirement for notices/authorization sent electronically. Amend the section as follows: (a)(3)(ii) Either in writing or electronically. ~~If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.~~	Institutions are under no obligation to confirm receipt of-or maintain records of-letters delivered by the United States Postal Service. Requiring more documentation of the electronic process than the paper process thwarts efforts to achieve efficiencies in this area. Electronic mail should be held to the same status as the mail delivered by the USPS, since there is no evidence that the delivery of electronic mail is less reliable. In addition, students are becoming more computer-savvy, and are demanding that institutions provide notices electronically. Technology should not create added burdens	School Issue
8	**Electronic Process – administrative in CWS:** **675.19(b)(2)(i)**		Permit the use of electronic time systems as alternatives to paper time records.	The regulations require that the student's supervisor sign the time record. This requires a paper record that does not permit institutions to use electronic time systems that are in general use in the workplace. Institutions that have been permitted to use electronic systems for this purpose (under the Experimental Sites authority) report that their reporting accuracy has increased, therefore, schools should be able to use paper or electronic systems.	(Duplicate of #6)
14	**Perkins Late Charges** **674.43(b)(2)**	464(b)(1)(H)	Make assessment of late charges optional instead of mandatory. Part 674.43(b)(2) should be amended as follows: (2) Subject to § 674.47(a), the institution may ~~shall~~ assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure-- (i) Any part of an installment payment not made when due, or (ii)A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.	Given the current limitations on what expenses institutions can charge to the Perkins fund, the regulations should not dictate any minimum amounts that schools must assess for late payments. The regulations establish the maximum amount at 20% of the installment payment amount, but we question whether the Federal interest is served by dictating any minimum amounts. Institutions are in the best position to determine whether the assessment of a late charge is prudent.	Loan Issue (Propose Perkins Workgroup)

PROPOSED ISSUES FOR NEGOTIATION

17	**Perkins** **Rehabilitation of Loans** **34 CFR 674.39(a)**	**HEA 464(h)**	Prohibit rehabilitation on loans on which a judgment has been rendered.	Statute and regulations permit rehabilitation on virtually any loan. It is our understanding that legally, a judgment replaces the original promissory note as the enforceable debt instrument and thus should not be considered a loan. The regulation requires schools, which have already expended considerable effort and cost to obtain a court judgment against a borrower, to then ask the court to vacate that judgment if the borrower makes 12 consecutive monthly payments. Vacating the judgment would not only result in additional court and legal fees; it also may be viewed unfavorably by judges, thus prejudicing the outcome of future cases. Further, we fear that vacating the judgment may jeopardize future collection efforts if the borrower subsequently defaults on the rehabilitated loan.	Loan Issue (Propose Perkins Workgroup)

26	**Repayment- Three-times rule** **682.209(a)(7) (ii)**		Delete "If a graduated or income sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment."	This regulation prohibits lenders/holders from establishing repayment terms, which provides for any one installment exceeding any other installment by more than three times. Borrower's loans have become more complex and in greater amounts and borrower's need the maximum relief possible to avoid delinquency and default. Lenders have attempted to respond with more flexible repayment terms, however the "three-times" rule has thwarted their efforts.	Tentative Loan Issue *ED would like examples of alternatives*
27	**Repayment – Borrower Repayment Terms** **682.209 (a)(8)(iv)**		Delete the "written notice" requirement	This regulation allows a borrower to request a repayment term of less than 5 years. This request need not be in writing. However, after the borrower is in repayment, if the borrower wants to extend the 5-year period, it must be done in writing. This creates a level of unnecessary complexity for the borrower. Making this change would coordinate the repayment standards in this section of the regulations. Since the borrower is able to request a yearly change in repayment plans and is not required to put such a request "in writing", the regulations are treating borrowers inconsistently.	Loan Issue
35	**Return of Title IV Funds** **Late Disbursements 668.22 (e) and 668.164 (g)(3)(i)**	484B (3)	Clarify when the late disbursement regulations found in the cash management regulations are to be used.	The Return of Title IV regulations require a late disbursement of any aid for which the student was eligible. Previously, late disbursement were covered in the cash management regulations. The existing regulations were not changed even though the Department changed the policy on the treatment of second and subsequent disbursements. The Department said it changed the guidance for the treatment of second and subsequent disbursement in certain circumstances only, i.e. post-withdrawal disbursement. It is easy to become confused as to what regulation applies in what circumstance. Either mandating or denying these late disbursements could have devastating consequences for individual students, causing them to receive and then immediately repay funds that they may not need, or failing to offer the needed financial support for expenses they have already incurred	School Issue
36	**Late Disbursements:** **"No Fault" Late**	484B	Promulgate ED guidance allowing for late disbursements after the "90-day window" currently provided for if the disbursement was due to "no fault" of the borrower.	ED has provided written confirmation allowing for a late disbursement to be made after the 90-day window if it is determined that the late disbursement was not the fault of the borrower.	School and Loan Issue

	disbursements: 668.164 (g)(3)(ii)				
39	**Return of Title IV Funds - Attendance** **668.22(j)(1)(B)**	484B	Clarify that schools that are required to take attendance are those required to do so by their certification or licensing board.	Many institutions do not require faculty to take attendance. This fact is acknowledged in HEA Section 484B which specifically addresses institutions that are required to take attendance (HEA Sec.484B(c)). Yet, the Department of Education forces financial aid officers to use substitutes for attendance records where none exist when a student fails to formally withdraw from the institution. Aid officers are put in the untenable position of having to cajole and plead with faculty to provide some **proof of attendance** for a student to whom they gave a failing grade. The exchange can be particularly unpleasant when the faculty state the failing grade was earned by the student. In these instances the faculty person must be located, the documentation received and the refund calculated all within 30 days of the end of the semester, when most institutions take at least 2 weeks to post grades and produce the necessary reports for determining unofficial withdrawals. This entire process presents an administrative burden unequal to that created by any other regulation. The cost of the time and effort as well as the cost of returning the funds for these students can be a significant burden for institutions, especially our community colleges. As an institution that is not required to take attendance, we are subject to determine the date of withdrawal based on unsubstantiated and oftentimes disputable evidence. Schools that are not required to take attendance by their accrediting agency find it difficult to make the determination of the students last day of attendance. The statute clearly states that the date of withdrawal is the date the institution indicates that the student withdrew, in accordance with institutional policies. As the Department has imposed a more restrictive definition, a change is needed to reinforce the current statute. The Department has stated that if—in the Department's opinion—the only way that an institution could meet any agency's requirements is by	School Issue

PROPOSED ISSUES FOR NEGOTIATION

		484B(c)(1)(B)		taking attendance, the institution must take attendance for that population. This interpretation inappropriately expands the statutory requirement.	
41	**Return of Title IV funds:** **Leave of Absence** **668.22 (d)**	484B 484B(a)(2)	Clarify that multiple leaves of absence are permitted within the statutory timeframe.	The current ED regulations governing leaves of absence are detailed, prescriptive, and override institutional policies. These regulations prevent repeated leaves of absence – a situation that disadvantages chronically ill students. The Department has interpreted the statute as allowing a student only one leave of absence and has created a complex set of exceptions. Circumstances that would cause a student to request such a leave are often repetitive and it is certainly possible that a student may need to request a second leave. The statute is clear that such leaves may not exceed a total of 180 days in any 12-month period, and does not imply any need for regulatory restrictions.	School Issue. The rationale is not correct. ED has already issued guidance on issue. Can codify in regs.
42	**Return of Title IV funds : 50% Grant Protection** **668.22**	484B	Amend the statute to provided for 50% grant protection for students who withdraw more than once. Allow institutions to determine if a student should	Current regulations treat the neediest students unfairly by demanding that a large sum of grant money be returned even if the funds have already been spent. The student should not have to return more than 50% of total grant funds received. The protected amount should be subtracted at the conclusion of the formula calculation from the amount the student is expected to repay. Institutions are concerned that a small number of students might try to	Tentative School Issue ED willing to consider a change within constraints of statute. Consider proposal inclued in House-passed HEA Technical Amdts.

			be insulated by the 50% rule	"game" the system by enrolling simply to withdraw early and walk away with grant funds. This would be an optional step for the institution; the institution should have the ability to set a policy that works best for its students.	
53	**Forbearance: Simplification 682.211**		Recommend the elimination of the regulatory language "agreed in writing" for all forbearance types except those mandated by statutory requirements. Specifically, revise paragraphs 682.211(b) and (c) as follows: (b) A lender may grant forbearance if – (1) the lender and the borrower or endorser agree ~~in writing~~ to the terms of the forbearance~~, and the lender provides confirmation of the terms of the forbearance~~; (2) in the case of forbearance granted under paragraphs (h)(1), (h)(2)(i), or (h)(2)(ii)(A) of this section, the lender and the borrower or endorser agree in writing to the terms of the forbearance; or, (3) in the case of forbearance of interest during a period of deferment, ~~if~~ the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne. (c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree ~~in writing~~ to the terms of the forbearance.	The FFELP community continues to advocate further simplification and flexibility in the forbearance process. We recommend the elimination of regulatory language requiring the borrower or endorser to "agree in writing" to the terms of the forbearance. The use of electronic communications has seen a marked increase. By permitting borrowers to request forbearance through convenient methods and to receive notification of the forbearance terms, both the Department of Education and the FFELP community can quickly react to a borrower's personal or financial circumstances by granting forbearance in a more efficient manner. In addition, the statute only requires a written agreement for specific types of mandatory forbearance. For those discretionary and administrative forbearance provisions described in statute, no similar requirement for a written agreement exists. Regulations should limit the requirement for a written agreement to only those circumstances described by statute.	Quick Fix Loan Issue
54	**Administrative: Copies of Promissory Notes: 682.402(g)(1)(i)**		Provide explicit clarification that a true and exact copy of a promissory note is acceptable for claim payment purposes for all claim types. Section 682.402(g)(1)(i) should be revised to read: "(i) The original or true and exact copy of the promissory note" and delete "certified by the lender as true and exact"	Current Master Promissory Note guidance provides for the use of copies. For consistency, ED should provide guidance that allows for the use of true and exact promissory note copies for all loan types, all versions of promissory notes, and all claim types. Only a partial change to correct these inconsistencies was included in the 6/29/01 Technical Corrections (TC) regulations package ("accurate" was changed to "exact"). The FFEL community proposal for 1999 TC also	Loan Issue

				asked for the deletion of the phrase requiring certification by the lender, in order to make the regulations consistent.	
57	**Guaranty Agency Issues:** **Reinsurance: 682.412 Ineligible borrowers**		Clarify that ineligible borrower claims are considered "special claims" and are 100% reinsured. Add a new section to 682.404(a)(1)(iii) as follows: (E) For loans on which a borrower failed to establish eligibility as described in 682.412.	With the implementation of "Form 2000" the Department changed the instructions for guaranty agency billing and reduced the reinsurance of ineligible borrower claims from 100% to 98%. Previous longstanding guidance from the Department provided for 100% reinsurance on these claims. Lenders and guarantors are now subject to risk sharing on ineligible claims, even though they have no opportunity to prevent the claim filing. 682.412 states that lenders are to "treat the loan as in default" for purposes of filing a claim; however, ineligible claims are not treated as defaults for any other purposes. Claims are not reviewed as defaults: there are no collection activities except the issuance of a single final demand letter; there is no opportunity, except payment in full, to prevent the filing of the claim with the guarantor; and, no deferment or forbearance options are available. The purpose of reduced insurance/reinsurance is to encourage active default aversion activities. Because there is no opportunity for default aversion activities, reduced insurance/reinsurance is inappropriate for this claim type. Also, consolidation and rehabilitation are not options for borrowers with claims paid due to ineligibility.	Loan Issue
64	**Incentive Compensation 668.14**	487(a)(20)	Clarify that the prohibition on incentive compensation does not extend to revenue-sharing agreements between institutions and third-party service providers that have no decision-making authority for admissions or financial aid awards. *Comments made by some in communityto ED have been made that prior regulatory preambles regarding incentive compensation extended reach of prohibition beyond its plain language, and informal guidance has been inconsistent.*	Institutions of higher education utilize revenue-sharing contracts for a wide variety of services from third-party contractors. Even where such contracts include payments based on student enrollments or student population, the third-party contractor often has no control over admissions decisions or the awarding of financial aid. In such agreements, the actual scope of the contractor's functions and obligations in any given academic year might depend in substantial part upon how many students enroll for that year. Revenue-sharing contracts therefore permit the institution and the third-party vendor the ability to allocate funds in a manner that compensates the vendor on a basis roughly parallel to the scope and quantity of the required services. The current HEA provision, as interpreted by the Department of Education, unnecessarily restricts such equitable arrangements.	School Issue. Clarify and define reach of prohibition.

PROPOSED ISSUES FOR NEGOTIATION

65	**12-Hour Rule** **668.2(b)(2)(ii)(B)**		Repeal the 12-Hour Rule by statutorily defining "week of instruction" for all educational programs as "a week in which a least one day of instruction, examination, or preparation for examination occurs." Review and modify those rules impeding distance education, including the 12-hour rule.	We strongly agree with the reports of the Web-Based Education Commission and the Distance Learning Demonstration Program that the 12-Hour Rule impedes institutions from offering many high-quality, non-traditional educational programs. There is simply no meaningful way to measure 12 hours of instruction for innovative curricula that combine both what traditionally might be considered instruction and out-of-class work, so there is no distinction between instructional time and "home work." We also believe that measuring "seat time" rather than educational outcomes is a misguided regulatory approach. Moreover, the accrediting bodies and state licensing authorities are best equipped, in our opinion, to measure educational outcomes	School Issue Limited changes. Cannot change statutory 30-wk definition of *academic year,* but can look at week of instruction in regs.
67	**Financial Responsibility** **90-10 Rule** **600.5**	102(b)(1)(F)	Reinstate an institution's ability to count SEOG/Perkins matching funds as non-Title IV revenue. Clarify that an institution may count money set aside by a student (and his or her family) for educational costs before any Title IV funds when determining the institution's eligibility.	During debate of the 1998 reauthorization of the Higher Education Act, House and Senate conferees agreed that the definition of "revenue" used to determine a proprietary institution's eligibility under the 85-15 Rule should not be changed. Instead, the conferees agreed to change the percentage used to determine proprietary institutions' eligibility from no more than 85% of a proprietary institution's revenue coming from Title IV federal grants and loans, to no more than 90% of such revenue derived from Title IV. Under pressure from the Office of the Inspector General (OIG), the Department of Education disregarded the clear intent of Congress and significantly modified the definitions used to define revenue and calculate an institution's eligibility. At the heart of the issue were three forms of non-Title IV funds that the OIG stated should not be included at all in the calculation because they did not represent "in-flows" of cash under traditional cash-based accounting. Under this reasoning, institutional scholarships which take the form of tuition waivers are not counted, even if the beneficiaries of such scholarships are chosen by an outside entity independent of the institution.	Tentative School Issue. ED willing to consider campus-based matching funds, but not institutional scholarships/loans in scope. Receipts from qualified savings plans not co-payable to school may be problematic.

				After failing to reach consensus with the higher education community during negotiated rulemaking, the Department published final regulations in October 1999 significantly revising the definitions of revenue to incorporate the OIG's new interpretation.	
75	**Equity in Athletics Disclosure Act (EADA) Reporting** **668.47, 668.41(g) and 668.23**	485(g)	The time period for the preparation of EADA disclosures and reporting to ED (34 CFR 668.41(g)) should be changed to correspond to the time period allowed for the submission of audited financial statements (34 CFR 668.23).	Coeducational colleges and universities that have intercollegiate athletics programs are required under the Equity in Athletics Disclosure Act (EADA) to prepare reports on participation and institutional financial support for athletics. The department has imposed an October 15 deadline for disclosure of the report for the immediately preceding year. By statute, the institutions are then required to submit those reports to the department 15 days later. This deadline can force institutions to disclose and report financial data in their EADA reports that is inconsistent with their final audited financial statements. The deadline should be changed to allow institutions to prepare their EADA report using final audited financial data.	Tentative School Issue Current October 15 date is NCAA requirement. Need more information from proponents.
81	**Change of Ownership:** **668.13**		Amend 34 CFR 668.13 to broaden the exception to the change of ownership provisions to include any change of ownership interest among family members or partners, or transactions which simply redistribute ownership shares among those who are already reported to have an ownership interest. Create an exemption when a change in structure does not create a true change in control of the institution. These changes would refocus the provisions on the types of changes in control which are of concern and would be a more efficient use of Department resources. These changes would also reduce an unnecessary burden on small family-owned businesses.	Under the Department's regulations, a change in ownership and control occurs when a person or company obtains control over a college, including the sale or transfer of the controlling shares of stock, a merger or a division, and asset transfers. Essentially, when these provisions are invoked, the institution is treated as a new institution applying for participation. The institution must provide an audited financial statement, is provisionally certified for three years, and the "new owner" and staff are required to participate in the Department's basic training program on student aid. The current regulations trigger the change of ownership provisions too frequently, and can create a significant expense and risk for the institution. The Department of Education dedicates a considerable amount of resources to reviewing changes of ownership which are not really the types of changes of control which should be of concern. This is particularly true regarding changes of ownership interests among family members within family-owned businesses, between partners, or when parent and subsidiary companies are reorganized. Many times these changes occur because of the illness of a parent or one of the partners, or as part of estate-planning efforts.	School Issue ED would consider changes for family members only.

				Triggering the regulatory "change of ownership" provisions has significant costs and consequences. The institution must incur the expenses for a "same day" balance sheet and audit, and is provisionally certified for a period of three years.	
82	**GEAR UP:** **694.10**	404A-G	ED should be instructed to strike Sec. 694.10, and be prohibited from establishing packaging rules.	The final GEAR UP regulations include a provision not anticipated by Congress — to make GEAR UP scholarships "last dollar." This marked the first time that a major federal program departed from the long-standing policy of making federal aid "first dollar," so as to empower needy students with the financial resources to go to college. The regulation is purely the creation of ED officials. In looking for legal authority to impose this rule, the regulators have cited statutory language that program funds had to be used to "supplement and not supplant" existing early intervention programs. While this is common and appropriate language for programmatic funds, it was never anticipated that this rule would be used to sanction "last dollar" student aid packaging rules for a federal program — and the Congressional staff in both houses that drafted these provisions have confirmed that they never intended this interpretation. Not only is the last dollar provision a bad deal for needy students, it is a bad deal for the GEAR UP program as a whole. The regulation means that any college that accepts a GEAR UP scholarship is now open to a review of its entire financial aid packaging policies by federally authorized regulators. However well-intentioned, these regulators will frequently not be in a position to understand the many factors that influenced the distribution of private student financial aid funds. A college accepting a student with a GEAR UP scholarship must also ensure that no outside charity — such as Kiwanis — reduces its aid to that student. Colleges have no such control, nor should they, over these independent charities. The provision also means that GEAR UP scholarship students will no longer be eligible for the host of private "last dollar" scholarships made available by community organizations and foundations. Moreover, the designated regulators for the program are inappropriate. Instead of	School Issue

				following the traditional process of program compliance handled by federal employees, the ED took the unusual step of designating GEAR UP program operators as regulators. Under this scenario, if the state of California gives a GEAR UP student a scholarship, it would oversee the packaging policy at any school the GEAR UP student attended. So, if the University of Hawaii accepted a California GEAR UP scholarship student, Hawaii's aid packaging policy would be subject to review by the State of California. As a result of this ill-conceived policy, many colleges have been reluctant to apply for the program, a number of major higher education associations will not support additional funding, and many states have requested and received waivers from the scholarship requirement—this final move leaves GEAR UP students with no scholarships at all. With early intervention and increased grant aid the two most essential ingredients needed to increase college participation rates, and with an explosion in the number of poor and minority students who will be college age in the next decade, the tragic consequences of this regulation cannot be overstated.	
88	**Use of College Work Study Funds**	443(b)(2)(B)	Clarify the conditions under which the Secretary may grant a waiver of the utilization of FWS funds for community service.	Many institutions have a strong commitment to service and incorporate it into their institutional philosophy and program structure. These institutions often have difficulty meeting the 7% requirement to expend FWS funds on community service. This statutory change is suggested to permit the Secretary to recognize schools who have voluntarily undertaken substantial community service activities on their own initiative, and not because of government's mandate. In so doing, the Secretary could avoid penalizing these schools that are unable to meet the federal commitment because community service slots are not available for FWS eligible student workers in the community due to the school's considerable other community service activities.	Tentative School Issue Need clarification of proposal, since codified condtions may limit current flexibility. Need to discsuss non-compliance.

DRAFT NEGOTIATED RULEMAKING AGENDA – REGULATORY RELIEF --12-14-2001

PROPOSED ISSUES FOR NEGOTIATION

89	**Need Analysis**	472(2)	Clarify that the allowable rental or purchase of a computer may occur before the start of an award year	Such a rental or purchase may often occur prior to the start of the academic year for which the machine is to be used. This interpretation is unfair to parents who purchase a computer in June as a high school graduation gift in anticipation of a September college enrollment.	Tentative school issue Practice is allowable, may only need clarification.
94	**General Issues:** **Regaining of eligibility for Students**	Handbook page 1-2	Establish uniform retroactive treatment for ineligible students who regain eligibility within a payment period	Currently, an ineligible student who regains eligibility during a payment period is eligible for Pell Grants and campus-based program funds retroactively to the beginning of the payment period. However, the same student is eligible for FFEL or Direct Loans retroactively to the beginning of the enrollment period that may include a previous payment period. This means that a student could have a FFEL or Direct Loan for a payment period during which they are ineligible to receive campus-based or Pell Grant funds. A student should regain his or her eligibility for all Title IV programs at the same time.	Tentative School and Loan Issue Provisions should be consistent
99	**Cost of Attendance**	472 (1) and (2)	Clarify when the inclusion of the cost of rental or purchase of a computer can be added to the cost of attendance.	It would be helpful to add the cost of the computer before the student's first day of class.	Duplicate of #89
100	**Over award tolerances** **673.5**		Use the $300 over award tolerance for all federal aid programs so there is consistency with all federal aid programs. Currently the over award tolerance is different for students with FFEL and/or Direct Loans		School and Loan Issue
ED	**Home Schooled Students** **668.32** **600.2**	484	Clarify and define Title IV eligibility requrirements for home-schooled students and make consistent with instituional eligibility requirements.	Students who complete a home school curriculum are eligible for Title IV programs pursuant to HEA sec. 484; however, if such students are under the age of state compulsory education, the admission of such students to institutions of higher education raises institutional eligibility issues under HEA sec. 101.	School Issue