

Team V - General and Non-Loan Issues		
Issue Paper Number and Topic	Page #	
#1 Year-Round Pell	2	1
#2 Pell Grants and Children of Soldiers	10	2
#3 TEACH Grant Extenuating Circumstances	13	3
#4 Grants for Federal Work Study	20	4
#5 Conform the FWS rules to the Cash Management rules	27	5
#6 Definition of Community Service	34	6
#7 Flexible Use of Funds	37	7
#8 Work Colleges	43	8
#9 90/10 (Non-Title IV Revenue Requirement)	51	9
#10 Consumer Information	72	10
#11 Fire Safety Standards	88	11
#12 Missing Person Procedures	98	12
#13 Hate Crime Reporting	104	13
#14 Emergency Response and Evacuation Procedures	107	14
#15 Students with Intellectual Disabilities	113	15
#16 Readmission for Servicemembers	123	16
#17 Teach-Outs Requirements and Procedures	149	17
#18 Baccalaureate in "liberal arts" in Proprietary Schools	159	18
#19 Peer-to-Peer File Sharing	164	19
#20 Institutional Plans for Improving Academic Program	174	20
#21 LEAP Non-Federal Share	177	21
#22 Notification to Students of Source of LEAP Funds	180	22
#23 GAP: Program Activities - Partnerships	184	23
#24 GAP: Program Activities - Award	189	24
#25 GAP: Program Activities - Early Notification	194	25
#26 Applicability of LEAP Program Requirements in GAP	198	26
#27 Gap Allotment: Application	199	27
#28 GAP Allotment: Determination	204	28
#29 GAP - Matching	209	29
#30 GAP - Statutory and Regulatory Relief	214	30
#31 GAP - Estimated Financial Assistance	215	31
		32
		33
		34

Issue Paper #1

Origin: HEOA

Issue: Receiving Up to Two Scheduled Federal Pell Grant Awards during a Single Award Year

Statutory cites: Section 401(b)(5)(A) of the HEA

Regulatory cites: §690.63, §690.64, §690.67 and §690.80

DCL GEN-08-12 cite: Pages 103-104

Summary of issue: The amendments made by the HEOA require that a student may receive up to two Federal Pell Grant Scheduled Awards during a single award year if the student is enrolled at least half-time for more than one academic year, more than two semesters, or the equivalent time during a single award year. The student must also be enrolled in a certificate, associate degree or baccalaureate degree program.

Updated information since 3/2-4 meetings:

Section 690.63 would be amended to provide instructions on how an institution calculates the Pell Grant payment for a payment period that may include the credit or clock hours and weeks of instructional time for both a first and second Scheduled Award.

Section 690.64 would be amended to address the treatment of a payment period that occurs in two award years. Institutions would be required to assign a payment period that occurs in two award years to the award year the student receives the maximum payment for the payment period.

Section 690.67 would be amended to implement the requirements in section 401(b)(5)(A) of the HEA which allow a

1 student to receive up to two Federal Pell Grant Scheduled Awards
2 during a single award year.

3 Section 690.80 would be amended to require the
4 recalculation of a second Federal Pell Scheduled Award due to a
5 change in the student's enrollment status.

6 **Updated information since 4/14-16 meetings:**

7 Section 690.63 would be amended to provide instructions on
8 how an institution calculates the Pell Grant payment for a
9 payment period that may include the credit or clock hours and
10 weeks of instructional time for both a first and second
11 Scheduled Award.

12 Section 690.64 would be amended to address the treatment of
13 a payment period that occurs in two award years. Institutions
14 would assign the payment period to the award year with the
15 highest payment based on the information available at the time
16 the payment is initially calculated but would be required
17 subsequently to recalculate the payment if the student would
18 receive a larger payment by reassigning the payment to the other
19 award year.

20 Section 690.67 would be amended to implement the
21 requirements in section 401(b)(5)(A) of the HEA which allow a
22 student to receive up to two Federal Pell Grant Scheduled Awards
23 during a single award year. As amended, this section would
24 provide that a student generally must complete the hours of the
25 first academic year in the award year to receive a payment from
26 a second Scheduled Award in the award year.

27 Proposals are withdrawn that would amend §690.80 to require
28 the recalculation of a second Federal Pell Scheduled Award due
29 to a change in the student's enrollment status.

30 **Tentative agreement:**

1 **Regulatory language:**

2 §690.63 Calculation of a Federal Pell Grant for a payment
3 period.

4 * * * * *

5 (h) Payment from two Scheduled Awards. (1) In a payment
6 period, a student may receive a payment from the student's first
7 Scheduled Award in the award year and the student's second
8 Scheduled Award in the award year if--

9 (i) The student is an eligible student who meets the
10 provisions of §690.67; and

11 (ii) The student's payment for the payment period is
12 greater than the remaining balance of the first Scheduled Award.

13 (2) The student's payment for the payment period--

14 (i) Is calculated based on the total credit or clock hours
15 and weeks of instructional time in the payment period; and

16 (ii) Is the remaining amount of the first Scheduled Award
17 plus an amount from the second Scheduled Award for the balance
18 of the payment for the payment period.

19 §690.64 Calculation of a Federal Pell Grant for a payment
20 period that occurs in two award years.

21 If a student enrolls in a payment period that is scheduled
22 to occur in two award years--

23 (a) The entire payment period must be considered to occur
24 within one award year;

25 (b)(1) An institution shall assign the payment period to
26 the award year in which the student receives the greater payment
27 for the payment period based on the information available at the

1 time ~~that the student's Federal Pell Grant is initially~~
2 ~~calculated of disbursement; and~~

3 (2) If, subsequent to the initial ~~disbursement calculation~~
4 ~~of the student's payment~~ for the payment period, the institution
5 ~~determines receives information~~ that the student would receive a
6 greater payment for the payment period by reassigning the
7 payment to a different award year, the institution ~~may must~~
8 reassign the payment to the award year providing the greater
9 payment;

10 (c) ~~Except as provided in paragraph (b) of this section,~~
11 ~~the~~ institution shall place a payment period with more than six
12 months scheduled to occur within one award year in that award
13 year;

14 (d) If an institution places the payment period in the
15 first award year, it shall pay a student with funds from the
16 first award year; and

17 (e) If an institution places the payment period in the
18 second award year, it shall pay a student with funds from the
19 second award year.

20 §690.67 Receiving up to two Scheduled Awards during a single
21 award year.

22 (a) ~~Eligibility.~~ An institution shall award ~~up to the~~
23 ~~full amount of~~ a second Scheduled Award to a student in an award
24 year if the student--

25 (a1) Has successfully completed the credit or clock hours
26 of the first academic year in the award year ~~Is enrolled at~~
27 ~~least as a half-time student in a payment period during which~~
28 ~~the student would be earning credit or clock hours applicable to~~
29 ~~a second academic year in the award year; and~~

1 (2) Is enrolled at least as a half-time student.

2 (b) Transfer student. (1) If a student transfers to an
3 institution during an award year, the institution must--

4 (i) Determine the credit or clock hours earned at other
5 institutions during the award year; and

6 (ii) Must apply the credit or clock hours identified under
7 paragraph (b)(1)(i) of this section in determining the student's
8 eligibility for a second Scheduled Award.

9 (2) Except as provided in paragraph (b)(3) of this
10 section, to determine the credit or clock hours earned at other
11 institutions during the award year--

12 (i) The institution must assume that a student has
13 completed the credit or clock hours in the first academic year
14 of the award year if the first Scheduled Award was disbursed at
15 other institutions during the award year; or

16 (ii) If less than the first Scheduled Award has been
17 disbursed at other institutions during the award year, the
18 institution must multiply the amount of the student's Scheduled
19 Award disbursed at other institutions during the award year by
20 the number of credit or clock hours in the institution's
21 academic year and dividing the product of the multiplication by
22 the amount of the Scheduled Award at the other institutions.

23 (3) (i) If an institution has information concerning the
24 credit or clock hours earned by a student while attending other
25 institutions, the institution must determine the credit or clock
26 hours earned at other institutions based on this information.
27 If the credit or clock hours earned at other institutions are
28 proportionally a greater percentage of an academic year than the
29 credit or clock hours determined under paragraph (b)(2) of this
30 section, the institution shall rely on these hours in

1 determining the credit or clock hours that the student has
2 completed in the award year.

3 (ii) If an institution receives information described in
4 paragraph (b)(3)(i) of this section in a payment period
5 subsequent to a prior payment period in which the institution
6 disbursed a payment of a second Scheduled Award in the award
7 year based on the application of paragraph (b)(2) of this
8 section, the institution is not required to apply the
9 information to the prior payment period.

10 (4) An institution must attribute to the current award
11 year any credit or clock hours earned at other institutions that
12 were earned in a payment period that it determines was scheduled
13 to occur in the prior award year and the current award year.

14 (c) Special circumstances. (1) The financial aid
15 administrator at a student's institution may waive the
16 requirement in paragraph (a)(1) of this section, if the
17 financial aid administrator--

18 (i) Determines that, in the period during which the first
19 Scheduled Award was disbursed, the student was unable to
20 complete the clock or credit hours in the student's first
21 academic year in the award year due to circumstances beyond the
22 student's control; and

23 (ii) The determination is made and documented on an
24 individual basis.

25 (2) For purposes of paragraph (c)(1) of this section,
26 circumstances beyond a student's control--

27 (i) Include, but are not limited to, the student
28 withdrawing from classes due to illness or being unable to
29 register for classes necessary to complete his or her eligible

1 program because those classes were not offered during that
2 period; and

3 (ii) Do not include, for example, withdrawing to avoid a
4 particular grade or instructor or failing to register for any
5 reason for a necessary class that was offered during the period.

6 (d) An institution may not determine the student's
7 eligibility for a second Scheduled Award based on credit or
8 clock hours, including credit or clock hours accepted on
9 transfer, if the student received the credit or clock hours
10 based on Advanced Placement (AP) programs, International
11 Baccalaureate (IB) programs, testing out, life experience, or
12 similar competency measures.

13 (Authority: U.S.C.)

14 ~~(b) Has successfully completed the credit or clock hours~~
15 ~~of the first academic year in the award year, or would be~~
16 ~~completing the credit or clock hours of that academic year in~~
17 ~~the payment period for which he or she is receiving a payment~~
18 ~~from a second Scheduled Award in the award year.~~

19 ~~§690.80 Recalculation of a Federal Pell Grant award.~~

20 ~~* * * * *~~

21 ~~(b) Change in enrollment status.~~

22 ~~(1) * * *~~

23 ~~(3) If the student's projected enrollment status changes~~
24 ~~at any time during a payment period in which the student~~
25 ~~receives a payment from a second Scheduled Award in an award~~
26 ~~year, the institution shall recalculate the student's payment~~
27 ~~for the payment period. The recalculation must take into~~
28 ~~account any changes in the student's cost of attendance.~~

29 **Statutory Language:**

1 ~~(6) (A) The Secretary may allow, on a case-by-case basis, a~~
2 ~~student to receive 2 Pell grants during a single award year, if~~

3 ~~(i) the student is enrolled full-time in an associate or~~
4 ~~baccalaureate degree program of study that is 2 years or longer~~
5 ~~at an eligible institution that is computed in credit hours; and~~

6 ~~(ii) the student completes course work toward completion of~~
7 ~~an associate or baccalaureate degree that exceeds the~~
8 ~~requirements for a full academic year as defined by the~~
9 ~~institution.~~

10 ~~(B) The Secretary shall promulgate regulations implementing~~
11 ~~this paragraph.~~

12 (5) (A) The Secretary shall award a student not more than
13 two Federal Pell Grants during a single award year to permit
14 such student to accelerate the student's progress toward a
15 degree or certificate if the student is enrolled-

16 (i) on at least a half-time basis for a period of more than
17 one academic year, or more than two semesters or an equivalent
18 period of time, during a single award year; and

19 (ii) in a program of instruction at an institution of
20 higher education for which the institution awards an associate
21 or baccalaureate degree or a certificate.

22 (B) In the case of a student receiving more than one
23 Federal Pell Grant in a single award year under subparagraph
24 (A), the total amount of Federal Pell Grants awarded to such
25 student for the award year may exceed the maximum basic grant
26 level specified in the appropriate appropriations Act for such
27 award year.

28

1 **Issue Paper # 2**

2 **Origin:** HEOA

3 **Issue:** Maximum Federal Pell Grant Award to Children of
4 Soldiers

5 **Statutory cites:** Section 401(f)(4) of the HEA

6 **Regulatory cites:** §690.75

7 **DCL GEN-08-12 cite:** Pages 104-105

8 **Summary of issue:** The HEA as amended by the HEOA provides
9 maximum Federal Pell Grant eligibility (an EFC of 0) for a
10 student (1) whose parent or guardian was a member of the Armed
11 Forces of the United States and died as a result of performing
12 military service in Iraq or Afghanistan after September 11,
13 2001, and (2) who was under 24 years old or enrolled in an
14 institution of higher education at the time of the parent or
15 guardian's death. These students are considered eligible for
16 the maximum Federal Pell Grant award if they meet the
17 requirements of section 401(c) of the HEA, as amended, regarding
18 the period of eligibility for a grant. The HEOA further directs
19 the Secretary of Veterans Affairs and the Secretary of Defense
20 to provide necessary information to the Secretary of Education.
21 This provision will not require any new questions on the FAFSA.

22 **Updated information since 2/2-4 meetings:**

23 Section 690.75 would be amended to implement the
24 requirement in section 401(f)(4) of the HEA.

25 **Updated Information since 3/14-16 meetings:**

26 Section 690.75(e)(3) of the draft proposed regulations
27 requires that a student have an expected family contribution
28 that would make a student eligible for a Federal Pell Grant.
29 This provision is removed.

1 **Tentative agreement:**

2 **Regulatory language:**

3 §690.75 Determination of eligibility for payment.

4 * * *

5 (e) A student is considered to have an expected family
6 contribution of zero if --

7 (1) The student's parent or guardian was a member of the
8 Armed Forces of the United States and died as a result of
9 performing military service in Iraq or Afghanistan after
10 September 11, 2001; and

11 (2) At the time of the parent or guardian's death the
12 student--

13 (i) Was under the age of 24; or

14 (ii) Was enrolled at an institution of higher education.
15 and

16 (3) The student has an expected family contribution for an
17 award year that is not greater than the maximum EFC that would
18 qualify any student for a Federal Pell Grant in that award year.

19 **Statutory Language:**

20 (4) (A) Notwithstanding paragraph (1) or any other provision
21 of this section, the expected family contribution of each
22 student described in subparagraph (B) shall be deemed to be zero
23 for the period during which each such student is eligible to
24 receive a Federal Pell Grant under subsection (c).

25 (B) Subparagraph (A) shall apply to any student at an
26 institution of higher education--

27 (i) whose parent or guardian was a member of the Armed
28 Forces of the United States who died as a result of performing

1 military service in Iraq or Afghanistan after September 11,
2 2001; and

3 (ii) who was less than 24 years of age, or was enrolled as
4 a full-time or part-time student at an institution of higher
5 education, as of the time of the parent or guardian's death.

6 (C) Notwithstanding any other provision of law, the
7 Secretary of Veterans Affairs and the Secretary of Defense, as
8 appropriate, shall provide the Secretary of Education with
9 information necessary to determine which students meet the
10 requirements of subparagraph (B).

11

1 **Issue Paper # 3**

2 **Origin:** Higher Education Opportunity Act of 2008

3 **Issue:** Extenuating Circumstances for Students Unable to
4 Fulfill Service Obligation under the TEACH Grant
5 Program

6 **Statutory cites:** 420N(d) (2) of the HEA

7 **Regulatory cites:** §§686.12, 686.41, and 686.42

8 **DCL GEN-08-12 cite:** Page 106

9 **Summary of issue:** The HEOA adds a new provision to the HEA that
10 requires the Secretary to establish categories of extenuating
11 circumstances under which a TEACH Grant recipient who is unable
12 to fulfill all or part of his or her service obligation may be
13 excused from fulfilling that portion of the service obligation.

14 **Updated information since 3/2-4 meetings:**

15 **Section 686.12(c)(1) currently allows creditable teaching**
16 **service to apply to more than one service obligation. This**
17 **section would be amended to also allow a suspension approved**
18 **under §686.41 or a discharge granted under §686.42 to apply to**
19 **more than one service obligation.**

20 Section 686.41 would be amended to limit the suspension for
21 a call or order to active duty status for a TEACH Grant
22 recipient to three years. After the three-year period, a TEACH
23 Grant recipient could apply for a discharge of his or her
24 service obligation. **This section would also be amended to allow**
25 **a representative on behalf of a TEACH Grant recipient to apply**
26 **for and submit the necessary documentation for a suspension of**
27 **the TEACH Grant recipient's service obligation.**

1 Section 686.42 would be amended to provide that a TEACH
2 Grant recipient could apply for a discharge of a portion or all
3 of his or her service obligation based on the number of years
4 called or ordered to active duty status. This section would
5 also be amended to allow a representative on behalf of a TEACH
6 Grant recipient to apply for and submit the necessary
7 documentation for a discharge of the TEACH Grant recipient's
8 service obligation.

9 **Tentative agreement:**

10 **Regulatory language:**

11 §686.12 Agreement to Serve.

12 * * * * *

13 (c) Completion of more than one service obligation.

14 (1) A grant recipient must complete a service obligation
15 for each program of study for which he or she received TEACH
16 Grants. Each service obligation begins following the completion
17 or other cessation of enrollment by the student in the TEACH
18 Grant-eligible program for which the student received TEACH
19 Grant funds. However, creditable teaching service, a suspension
20 approved under §686.41(a)(2), or a military discharge granted
21 under §686.42(c)(2) may apply to more than one service
22 obligation.

23 * * * * *

24 §686.41 Periods of suspension.

25 (a)(1) A grant recipient who has completed or who has
26 otherwise ceased enrollment in a TEACH Grant-eligible program
27 for which he or she received TEACH Grant funds may request a
28 suspension from the Secretary of the eight-year period for
29 completion of the service obligation based on--

1 (i) Enrollment in a program of study for which the
2 recipient would be eligible for a TEACH Grant or in a program of
3 study that has been determined by a State to satisfy the
4 requirements for certification or licensure to teach in the
5 State's elementary or secondary schools;

6 (ii) A condition that is a qualifying reason for leave
7 under the FMLA; or

8 (iii) A call or order to active duty status for more than
9 30 days as a member of a reserve component of the Armed Forces
10 named in 10 U.S.C. 10101, or service as a member of the National
11 Guard on full-time National Guard duty, as defined in 10 U.S.C.
12 101(d) (5), under a call to active service in connection with a
13 war, military operation, or a national emergency.

14 (2) A grant recipient may receive a suspension described in
15 paragraphs (a) (1) (i), (ii), and (iii) of this section in one-
16 year increments that--

17 (i) Does not exceed a combined total of three years under
18 both paragraphs (a) (1) (i) and (ii) of this section; or

19 (ii) Does not exceed a total of three years under ~~Ends upon~~
20 ~~the completion of the military service in paragraph (a) (1) (iii)~~
21 of this section.

22 (b) A grant recipient, , or his or her representative in the
23 case of a grant recipient that qualifies under paragraph
24 (a) (1) (iii) of this section, must apply for a suspension in
25 writing on a form approved by the Secretary prior to being
26 subject to any of the conditions under §686.43(a) (1) through
27 (a) (5) that would cause the TEACH Grant to convert to a Federal
28 Direct Unsubsidized Loan.

29 (c) A grant recipient, , or his or her representative in the
30 case of a grant recipient who qualifies under paragraph

1 (a) (1) (iii) of this section, must provide the Secretary with
2 documentation supporting the suspension request as well as
3 current contact information including home address and telephone
4 number.

5 * * * * *

6 §686.42 Discharge of agreement to serve.

7 (a) Death. If a grant recipient dies, the Secretary
8 discharges the obligation to complete the agreement to serve
9 based on an original or certified copy of the grant recipient's
10 death certificate, an accurate and complete photocopy of the
11 original or certified copy of the grant recipient's death
12 certificate, or, on a case-by-case basis, reliable documentation
13 acceptable to the Secretary.

14 (b) Total and permanent disability. (1) A grant recipient's
15 agreement to serve is discharged if the recipient becomes
16 totally and permanently disabled, as defined in 34 CFR
17 682.200(b), and the grant recipient applies for and satisfies
18 the eligibility requirements for a total and permanent
19 disability discharge in accordance with 34 CFR 685.213.

20 (2) The eight-year time period in which the grant recipient
21 must complete the service obligation remains in effect during
22 the conditional discharge period described in 34 CFR
23 685.213(c) (2) unless the grant recipient is eligible for a
24 suspension based on a condition that is a qualifying reason for
25 leave under the FMLA in accordance with §686.41(a) (1) (ii) (D) .

26 (3) Interest continues to accrue on each TEACH Grant
27 disbursement unless and until the TEACH Grant recipient's
28 agreement to serve is discharged.

29 (4) If the grant recipient satisfies the criteria for a
30 total and permanent disability discharge during and at the end

1 of the three-year conditional discharge period, the Secretary
2 discharges the grant recipient's service obligation.

3 (5) If, at any time during or at the end of the three-year
4 conditional discharge period, the Secretary determines that the
5 grant recipient does not meet the eligibility criteria for a
6 total and permanent disability discharge, the Secretary ends the
7 conditional discharge period and the grant recipient is once
8 again subject to the terms of the agreement to serve.

9 (c) Military discharge. (1) A grant recipient who has
10 completed or who has otherwise ceased enrollment in a TEACH
11 Grant-eligible program for which he or she received TEACH Grant
12 funds and has exceeded the period of time allowed under
13 §686.41(a)(2)(ii), may ~~qualify for request in writing to the~~
14 Secretary, a proportional discharge of his or her service
15 obligation due to an extended call or order to active duty
16 status. To apply for a military discharge, a grant recipient or
17 his or her representative must submit a written request to the
18 Secretary.

19 (2) A grant recipient described in paragraph (c)(1) of this
20 section may receive a--

21 (i) One-year discharge of his or her service obligation if
22 a call or order to active duty status is for more than three
23 years;

24 (ii) Two-year discharge of his or her service obligation if
25 a call or order to active duty status is for more than four
26 years;

27 (iii) Three-year discharge of his or her service obligation
28 if a call or order to active duty status is for more than five
29 years; or

1 (iv) Full discharge of his or her service obligation if a
2 call or order to active duty status is for six or more years.

3 (3) A grant recipient or his or her representative must
4 provide the Secretary with--

5 (i) A written statement from the grant recipient's
6 commanding or personnel officer certifying--

7 (A) That the grant recipient is on active duty in the Armed
8 Forces of the United States;

9 (B) The date on which the grant recipient's service began;
10 and

11 (C) The date on which the grant recipient's service is
12 expected to end; or

13 (ii) (A) A copy of the grant recipient's official military
14 orders; and

15 (B) A copy of the grant recipient's military
16 identification.

17 (4) For the purpose of this section, the Armed Forces means
18 the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

19 (5) A grant recipient enlisted in a reserve component of
20 the Armed Forces may qualify for a military discharge only for
21 service on a full-time basis that is expected to last for a
22 period of at least one year in length, as evidenced by official
23 military orders, unless an order for national mobilization of
24 reservists is issued.

25 (6) A grant recipient enlisted in the National Guard
26 qualifies for a military discharge only while the grant
27 recipient is on active duty status as a member of the U.S. Army
28 or Air Force Reserves, and meets the requirements of paragraph
29 (c) (5) of this section.

1 (7) Based on a request for a military discharge from the
2 grant recipient or his or her representative, the Secretary will
3 notify the grant recipient or his or her representative of the
4 outcome of the discharge request. ~~The Secretary will notify the~~
5 ~~grant recipient of the outcome of his or her request for a~~
6 ~~military discharge.~~ For the portion on the service obligation
7 that remains, the grant recipient must ~~continue to~~ fulfill his
8 or her service obligation in accordance with §686.12.

9 **Statutory Language:**

10 (2) EXTENUATING CIRCUMSTANCES.—The Secretary shall
11 establish, by regulation, categories of extenuating
12 circumstances under which a recipient of a grant under this
13 subpart who is unable to fulfill all or part of the recipient's
14 service obligation may be excused from fulfilling that portion
15 of the service obligation.

16

1 **Issue Paper #4**

2 **Origin:** HEOA

3 **Issue:** Grants for FWS Program

4 **Statutory cites:** Section 443 of the HEA

5 **Regulatory cites:** §§ 675.18, 675.26

6 **Summary of issue:** The HEOA permits institutions to use FWS
7 funds to compensate students employed in projects that teach
8 civics in schools, raise awareness of government functions or
9 resources, or increase civic participation.

10 In addition, the HEOA requires that, to the extent
11 practicable, an institution must

- 12 • Give priority to the employment of students participating
13 in projects that educate or train the public about
14 evacuation, emergency response, and injury prevention
15 strategies relating to natural disasters, acts of
16 terrorism, and other emergency situations; and
- 17 • Ensure that any student compensated with these funds
18 receives appropriate training to carry out the educational
19 services required.

20 Students performing these activities maybe paid for time
21 spent in training and travel. Finally, the HEOA specifies that
22 the Federal share of the compensation of FWS students may exceed
23 75%.

24 **Updated information since 4/14-16 meetings:** Tentative agreement
25 was reach on the changes made to Section 675.18 would be amended
26 to implement section 443 of the HEOA that promotes the use of
27 FWS funds to employ students in community service projects,
28 doing civic education and participation activities. When a

1 school has students performing these projects, to the extent
2 practicable it must give priority to the employment of students
3 participating in projects that educate or train the public about
4 evacuation, emergency response, and injury prevention strategies
5 relating to natural disasters, acts of terrorism, and other
6 emergency situations; and ensure that the students receive the
7 appropriate training to carry out the educational services
8 required.

9 Section 675.26 would be amended to implement the
10 requirements in section 443 to allow the Federal share of the
11 compensation of FWS students to exceed 75%.

12 **Tentative agreement: Yes**

13 **Regulatory language:**

14 ***§675.18 Use of funds.***

15 * * * * *

16 (f) * * *

17 (g) Community service. (1) For the 2000-2001 award year and
18 subsequent award years, an institution must use at least seven
19 percent of the sum of its initial and supplemental FWS
20 allocations for an award year to compensate students employed in
21 community service activities. In meeting this community service
22 requirement, an institution must include at least one-

23 (i) Reading tutoring project that employs one or more FWS
24 students as reading tutors for children who are preschool age or
25 are in elementary school; or

26 (ii) Family literacy project that employs one or more FWS
27 students in family literacy activities.

28 (2) The Secretary may waive the requirements in paragraph
29 (g)(1) of this section if the Secretary determines that an

1 institution has demonstrated that enforcing the requirements in
2 paragraph (g)(1) of this section would cause a hardship for
3 students at the institution.

4 (3) To the extent practicable, in providing reading tutors
5 for children under paragraph (g)(1)(i), an institution must—

6 (i) Give priority to the employment of students to tutor in
7 reading in schools that are participating in a reading reform
8 project that—

9 (A) Is designed to train teachers how to teach reading on
10 the basis of scientifically-based research on reading; and

11 (B) Is funded under the Elementary and Secondary Education
12 Act of 1965; and

13 (ii) Ensure that any student who is employed in a school
14 participating in a reading reform project described in paragraph
15 (g)(3)(i) of this section receives training from the employing
16 school in the instructional practices used by the school.

17 (4)(i) In meeting the seven percent community service
18 expenditure requirement in paragraph (g)(1) of this section, an
19 institution may employ students to perform civic education and
20 participation activities in projects that—

21 (A) Teach civics in schools;

22 (B) Raise awareness of government functions or resources;

23 or

24 (C) Increase civic participation.

25 (ii) To the extent practicable, in providing civic
26 education and participation activities under paragraph
27 (g)(4)(i), an institution must—

1 (A) Give priority to the employment of students in projects
2 that educate or train the public about evacuation, emergency
3 response, and injury prevention strategies relating to natural
4 disasters, acts of terrorism, and other emergency situations;
5 and

6 (B) Ensure that the students receive appropriate training
7 to carry out the educational services required.

8 (h) Payment for time spent in training and travel. (1) For
9 any award year, an institution may pay students for a reasonable
10 amount of time spent for training that is directly related to
11 FWS employment.

12 (2) Beginning with the 1999-2000 award year, an institution
13 may pay students for a reasonable amount of time spent for
14 travel that is directly related to employment in community
15 service activities (including tutoring in reading and family
16 literacy activities).

17 * * * * *

18 ***§675.26 FWS Federal share limitations.***

19 * * * * *

20 (d) For each award year, the Secretary authorizes a Federal
21 share of 100 percent of the compensation earned by a student
22 under this part if—

23 (1) The work performed by the student is for the
24 institution itself, for a Federal, State, or local public
25 agency, or for a private nonprofit organization; and

26 (2) (i) The institution in which the student is enrolled—

27 (A) Is designated as an eligible institution under—

1 (1) The Developing Hispanic-Serving Institutions Program
2 (34 CFR part 606);

3 (2) The Strengthening Institutions Program, American Indian
4 Tribally Controlled Colleges and Universities Program, or Alaska
5 Native and Native Hawaiian-Serving Institutions Program (34 CFR
6 part 607);

7 (3) The Strengthening Historically Black Colleges and
8 Universities Program (34 CFR part 608); or

9 (4) The Strengthening Historically Black Graduate
10 Institutions Program (34 CFR part 609); and

11 (B) Requests that increased Federal share as part of its
12 regular FWS funding application for that year;

13 (ii) The student is employed as a reading tutor for
14 preschool age children or children who are in elementary school;

15 (iii) The student is performing family literacy activities
16 in a family literacy project that provides services to families
17 with preschool age children or children who are in elementary
18 school; or

19 (iv) The student is employed as a mathematics tutor for
20 children who are in elementary school through the ninth grade.

21 (v) The student is employed in community service
22 activities, performing civic education and participation
23 activities in a project as defined in §675.18(g)(4).

24 * * * * *

25 **Statutory language:**

26 (a) AGREEMENTS REQUIRED.—The Secretary is authorized to
27 enter into agreements with institutions of higher education
28 under which the Secretary will make grants to such institutions

1 to assist in the operation of work-study programs as provided in
2 this part.

3 (b) CONTENTS OF AGREEMENTS.—An agreement entered into
4 pursuant to this section shall—

5 (1) provide for the operation by the institution of a
6 program for the part-time employment, including internships,
7 practical, or research assistantships as determined by the
8 Secretary, of its students in work for the institution itself,
9 work in community service or work in the public interest for a
10 Federal, State, or local public agency or private nonprofit
11 organization under an arrangement between the institution and
12 such agency or organization, and such work—

13 (A) will not result in the displacement of employed workers
14 or impair existing contracts for services;

15 (B) will be governed by such conditions of employment as
16 will be appropriate and reasonable in light of such factors as
17 type of work performed, geographical region, and proficiency of
18 the employee;

19 (C) does not involve the construction, operation, or
20 maintenance of so much of any facility as is used or is to be
21 used for sectarian instruction or as a place for religious
22 worship; and

23 (D) will not pay any wage to students employed under this
24 subpart that is less than the current Federal minimum wage as
25 mandated by section 6(a) of the Fair Labor Standards Act of
26 1938;

27 (2) provide that funds granted an institution of higher
28 education, pursuant to section 443, may be used only to make
29 payments to students participating in work-study programs,
30 except that—

1 (A) for fiscal year 2000 and succeeding fiscal years, an
2 institution shall use at least 7 percent of the total amount of
3 funds granted to such institution under this section for such
4 fiscal year to compensate students employed in community
5 service, and shall ensure that not less than 1 tutoring or
6 family literacy project (as described in subsection (d)) is
7 included in meeting the requirement of this subparagraph, except
8 that the Secretary may waive this subparagraph if the Secretary
9 determines that enforcing this subparagraph would cause hardship
10 for students at the institution; and

11 (B) an institution may use a portion of the sums granted to
12 it to meet administrative expenses in accordance with section
13 489 of this Act, may use a portion of the sums granted to it to
14 meet the cost of a job location and development program in
15 accordance with section 446 of this part, and may transfer funds
16 in accordance with the provisions of section 488 of this Act;

17 * * * * *

18 (B) * * *

19 (3) FEDERAL SHARE.—The Federal share of the compensation of
20 work-study students compensated under this subsection may exceed
21 75 percent.

22 (e) CIVIC EDUCATION AND PARTICIPATION ACTIVITIES.—

23 (1) USE OF FUNDS.—Funds granted to an institution under
24 this section may be used in accordance with such subsection to
25 compensate (including compensation for time spent in training
26 and travel directly related to civic education and participation
27 activities) students employed in projects that—

28 (A) teach civics in schools;

1 (B) raise awareness of government functions or resources;
2 or

3 (C) increase civic participation.

4 (2) PRIORITY FOR SCHOOLS.—To the extent practicable, an
5 institution shall—

6 (A) give priority to the employment of students
7 participating in projects that educate or train the public about
8 evacuation, emergency response, and injury prevention strategies
9 relating to natural disasters, acts of terrorism, and other
10 emergency situations; and (B) ensure that any student
11 compensated with the funds described in paragraph (1) receives
12 appropriate training to carry out the educational services
13 required.

14 (3) FEDERAL SHARE.—The Federal share of the compensation of
15 work-study students compensated under this subsection may exceed
16 75 percent.

17

1 **Issue Paper #5**

2 **Origin:** HEOA

3 **Issue:** Conform the FWS rules to the Cash Management Rules

4 **Statutory cites:** None

5 **Regulatory cites:** §675.16

6 **Summary of issue:** Technical changes needed to conform the FWS
7 rules with the cash management rules.

8 **Updated information since 4/14-16 meetings:** These changes would:

9 1. Provide for the \$200 prior year charge for FWS just as
10 it is for the other programs.

11 2. Provide that the FWS authorization may be on the same
12 authorization form used for the other programs, instead of a
13 separate form for FWS.

14 3. Provide for a single authorization for any title IV
15 disbursements via EFT, including FWS. .

16 4. Provide that the school may require a bank account for
17 FWS payments just as it does for other programs.

18 5. Apply the same concept of a stored-value card and other
19 devices to FWS as exists for the other programs.

20 6. Provide for similar wording for authorizations and the
21 cancellation of the authorizations for FWS as for the other
22 programs.

23 Please note that because the FWS payments represent
24 compensation, the institution needs an authorization to credit
25 FWS funds to a student's account to pay for any charges
26 including tuition and fees as well as room and board. This is
27 different from the other programs. Under FWS, an institution

1 cannot take compensation without an authorization or a legal
2 garnishment of wages.

3 **Tentative Agreement: Yes**

4 **Regulatory language:**

5 §675.16 Payments to students.

6 (a) General. (1) An institution must follow the
7 disbursement procedures in this section for paying a student his
8 or her wages under the FWS Program instead of the disbursement
9 procedures in 34 CFR 668.164(a), (b), and (d) through (g), and
10 34 CFR 668.165. The institution must follow 34 CFR 668.164(c)
11 on making direct FWS payments to students and 34 CFR 668.164(h)
12 on handling the return of FWS funds that are not received or
13 negotiated by a student.

14 (2) An institution must pay a student FWS compensation at
15 least once a month.

16 (3) Before an institution makes an initial disbursement of
17 FWS compensation to a student for an award period, the
18 institution must notify the student of the amount of funds the
19 student is authorized to earn, and how and when the FWS
20 compensation will be paid.

21 (4) Regardless of who employs the student, the institution
22 is responsible for ensuring that the student is paid for work
23 performed.

24 (5) A student's FWS compensation is earned when the
25 student performs the work.

26 (6) An institution may pay a student after the student's
27 last day of attendance for FWS compensation earned while he or
28 she was in attendance at the institution.

1 (7) A correspondence student must submit his or her first
2 completed lesson before receiving a payment.

3 (8) The institution may not obtain a student's power of
4 attorney to authorize any disbursement of funds without prior
5 approval from the Secretary.

6 (9) An institution makes a disbursement of FWS program
7 funds on the date that the institution credits a student's
8 account at the institution or pays a student directly with-

9 (i) Funds received from the Secretary; or

10 (ii) Institutional funds used in advance of receiving FWS
11 program funds.

12 (b) Crediting a student's account at the institution. (1)
13 If the institution obtains the student's authorization described
14 in paragraph (d) of this section, the institution may use the
15 FWS funds to credit a student's account at the institution to
16 satisfy-

17 (i) Current year charges for-

18 (A) Tuition and fees;

19 (B) Board, if the student contracts with the institution
20 for board;

21 (C) Room, if the student contracts with the institution
22 for room; and

23 (D) Other educationally related charges incurred by the
24 student at the institution; and

25 (ii) Prior award year charges with the restriction
26 provided in paragraph (b) (2) of this section for a total of not
27 more than \$200 for-

28 (A) Tuition and fees, room, or board; and

1 (B) Other institutionally related charges incurred by the
2 student at the institution.

3 (2) If the institution is using FWS funds in combination
4 with other title IV, HEA program funds to credit a student's
5 account at the institution to satisfy prior award year charges,
6 a single \$200 total prior award year charge limit applies to the
7 use of all the title IV, HEA program funds for that purpose.

8 (c) Credit balances. Whenever an institution disburses
9 FWS funds by crediting a student's account and the result is a
10 credit balance, the institution must pay the credit balance
11 directly to the student as soon as possible, but no later than
12 14 days after the credit balance occurred on the account.

13 (d) Student authorizations. (1) Except for the noncash
14 contributions allowed under paragraphs (e) (2) and (e) (3) of this
15 section, if an institution obtains written authorization from a
16 student, the institution may—

17 (i) Use the student's FWS compensation to pay for charges
18 described in paragraph (b) of this section that are included in
19 that authorization; and

20 (ii) Except if prohibited by the Secretary under the
21 reimbursement or cash monitoring payment method, hold on behalf
22 of the student any FWS compensation that would otherwise be paid
23 directly to the student under paragraph (c).

24 (2) In obtaining the student's authorization to perform an
25 activity described in paragraph (d) (1) of this section, an
26 institution—

27 (i) May not require or coerce the student to provide that
28 authorization;

1 (ii) Must allow the student to cancel or modify that
2 authorization at any time; and

3 (iii) Must clearly explain how it will carry out that
4 activity.

5 (3) A student may authorize an institution to carry out
6 the activities described in paragraph (d)(1) of this section for
7 the period during which the student is enrolled at the
8 institution.

9 (4)(i) If a student modifies an authorization, the
10 modification takes effect on the date the institution receives
11 the modification notice.

12 (ii) If a student cancels an authorization to use his or
13 her FWS compensation to pay for authorized charges under
14 paragraph (b) of this section, the institution may use those
15 funds to pay only those authorized charges incurred by the
16 student before the institution received the notice.

17 (iii) If a student cancels an authorization to hold his or
18 her FWS compensation under paragraph (d)(1)(ii) of this section,
19 the institution must pay those funds directly to the student as
20 soon as possible, but no later than 14 days after the
21 institution receives that notice.

22 (5) If an institution holds excess FWS compensation under
23 paragraph (d)(1)(ii) of this section, the institution must—

24 (i) Identify the amount of funds the institution holds for
25 each student in a subsidiary ledger account designed for that
26 purpose;

27 (ii) Maintain, at all times, cash in its bank account in
28 an amount at least equal to the amount of FWS compensation the
29 institution holds for the student; and

1 (iii) Notwithstanding any authorization obtained by the
2 institution under this paragraph, pay any remaining balances by
3 the end of the institution's final FWS payroll period for an
4 award year.

5 (e) (1) Timing of institutional share and noncash
6 contributions. Except for the noncash contributions allowed
7 under paragraph (e) (2) or (e) (3) of this section, an institution
8 must pay the student its share of his or her FWS compensation at
9 the same time it pays the Federal share.

10 (2) If an institution pays a student its FWS share for an
11 award period in the form of tuition, fees, services, or
12 equipment, it must pay that share before the student's final
13 payroll period.

14 (3) If an institution pays its FWS share in the form of
15 prepaid tuition, fees, services, or equipment for a forthcoming
16 academic period, it must give the student a statement before the
17 close of his or her final payroll period listing the amount of
18 tuition, fees, services, or equipment earned.

19 **34 CFR 668.161 Scope and purpose (Cash Management rules)**

20 * * *

21 (a) (4) FWS Program. An institution must follow the
22 disbursement procedures in 34 CFR 675.16 for paying a student
23 his or her wages under the FWS Program instead of the
24 disbursement procedures in §§668.164(a), (b), and (d) through
25 (g), and 668.165.

26 * * * * *

27

1 **Issue Paper #6**

2 **Origin:** HEOA

3 **Issue:** Definition of Community Service

4 **Statutory cites:** Section 441(c)(1) of the HEA

5 **Regulatory cites:** §675.2

6 **Summary of issue:** The HEOA expands the definition of community
7 service to include the field of emergency preparedness and
8 response.

9 **Updated information since 4/14-16 meetings:** The committee
10 reached tentative agreement on Section 675.2 amending to include
11 emergency preparedness and response.

12 **Tentative agreement:** Yes

13 **Regulatory language:**

14 **675.2 Definitions**

15 * * * * *

16 (b) The Secretary defines other terms used in this part as
17 follows:

18 *Community services:* Services which are identified by an
19 institution of higher education, through formal or informal
20 consultation with local nonprofit, governmental, and community-
21 based organizations, as designed to improve the quality of life
22 for community residents, particularly low-income individuals, or
23 to solve particular problems related to their needs. These
24 services include—

25 (1) Such fields as health care, child care (including child
26 care services provided on campus that are open and accessible to
27 the community), literacy training, education (including tutorial
28 services), welfare, social services, transportation, housing and

1 neighborhood improvement, public safety, emergency preparedness
2 and response, crime prevention and control, recreation, rural
3 development, and community improvement;

4 (2) Work in service opportunities or youth corps as defined
5 in section 101 of the National and Community Service Act of
6 1990, and service in the agencies, institutions and activities
7 designated in section 124(a) of that Act;

8 (3) Support services to students with disabilities,
9 including students with disabilities who are enrolled at the
10 institution; and

11 (4) Activities in which a student serves as a mentor for
12 such purposes as—

13 (i) Tutoring;

14 (ii) Supporting educational and recreational activities;
15 and

16 (iii) Counseling, including career counseling.

17 * * * * *

18 **Statutory language:**

19 (c) COMMUNITY SERVICES.—For purposes of this part, the term
20 ‘‘community services’’ means services which are identified by an
21 institution of higher education, through formal or informal
22 consultation with local nonprofit, governmental, and community-
23 based organizations, as designed to improve the quality of life
24 for community residents, particularly low-income individuals, or
25 to solve particular problems related to their needs, including—

26 (1) such fields as health care, child care (including child
27 care services provided on campus that are open and accessible to
28 the community), literacy training, education (including tutorial
29 services), welfare, social services, transportation, housing and

1 neighborhood improvement, public safety, emergency preparedness
2 and response, crime prevention and control, recreation, rural
3 development, and community improvement;

4 (2) work in a project, as defined in section 101(20) of the
5 National and Community Service Act of 1990 (42 U.S.C.
6 12511(20));

7 (3) support services to students with disabilities,
8 including students with disabilities who are enrolled at the
9 institution; and

10 (4) activities in which a student serves as a mentor for
11 such purposes as—

12 (A) tutoring;

13 (B) supporting educational and recreational activities; and

14 (C) counseling, including career counseling.

15

1 **Issue Paper #7**

2 **Origin:** HEOA

3 **Issue:** Flexible Use of Funds

4 **Statutory cites:** Section 445(d) of the HEA

5 **Regulatory cites:** §675.18

6 **Summary of issue:** The HEOA adds a provision under which an
7 eligible institution located in any area affected by a major
8 disaster, as determined by the Secretary, may make FWS payments
9 to disaster-affected students. The FWS payments may be made for
10 the period of time (not to exceed one academic year) in which
11 the disaster affected students were prevented from fulfilling
12 their work-study obligations for all or part of such academic
13 year due to the major disaster.

14 Payments may be made in an amount equal to or less than the
15 amount of FWS wages the students would have been paid had the
16 students been able to complete the work obligation necessary to
17 receive work-study funds. Payments may not be made to any
18 student who was not eligible for work-study or was not
19 completing the work obligation necessary to receive FWS funds
20 prior to the major disaster. Any payments made must meet the
21 FWS matching requirements, unless the Secretary waives the
22 matching requirements.

23 The term "disaster-affected student" means a student
24 enrolled at an eligible institution who:

- 25 • received an FWS work-study award for the academic year
26 during which a major disaster occurred;
- 27 • earned FWS wages from such eligible institution for such
28 academic year prior to the disaster;

1 • was prevented from fulfilling the student's work-study
2 obligation for all or part of such academic year due to such
3 major disaster; and

4 • was unable to be reassigned to another work-study job.

5 The term "major disaster" has the meaning as the term in
6 section 102(2) of the Robert T. Stafford Disaster Relief and
7 Emergency Assistance Act (42 U.S.C. 5122(2)): any natural
8 catastrophe (including any hurricane, tornado, storm, high
9 water, wind-driven water, tidal wave, tsunami, earthquake,
10 volcanic eruption, landslide, mudslide, snowstorm, or drought),
11 or, regardless of cause, any fire, flood, or explosion, in any
12 part of the United States, which in the determination of the
13 President causes damage of sufficient severity and magnitude to
14 warrant major disaster assistance under this chapter to
15 supplement the efforts and available resources of States, local
16 governments, and disaster relief organizations in alleviating
17 the damage, loss, hardship, or suffering caused thereby.

18 **Updated information since 4/14-16 meetings:** The committee
19 reached tentative agreement on the changes to Section 675.18
20 would be amended to add the provisions under which an
21 institution located in any affected area, as determined by the
22 Secretary, may make FWS payments to disaster-affected students.

23 **Tentative agreement: YES**

24 **Regulatory language:**

25 §675.18 Use of funds.

26 * * * * *

27 (g) Community service. (1) For the 2000-2001 award year and
28 subsequent award years, an institution must use at least seven
29 percent of the sum of its initial and supplemental FWS

1 allocations for an award year to compensate students employed in
2 community service activities. In meeting this community service
3 requirement, an institution must include at least one—

4 (i) Reading tutoring project that employs one or more FWS
5 students as reading tutors for children who are preschool age or
6 are in elementary school; or

7 (ii) Family literacy project that employs one or more FWS
8 students in family literacy activities.

9 (2) The Secretary may waive the requirements in paragraph
10 (g)(1) of this section if the Secretary determines that an
11 institution has demonstrated that enforcing the requirements in
12 paragraph (g)(1) of this section would cause a hardship for
13 students at the institution.

14 (3) To the extent practicable, in providing reading tutors
15 for children under paragraph (g)(1)(i), an institution must—

16 (i) Give priority to the employment of students to tutor in
17 reading in schools that are participating in a reading reform
18 project that—

19 (A) Is designed to train teachers how to teach reading on
20 the basis of scientifically-based research on reading; and

21 (B) Is funded under the Elementary and Secondary Education
22 Act of 1965; and

23 (ii) Ensure that any student who is employed in a school
24 participating in a reading reform project described in paragraph
25 (g)(3)(i) of this section receives training from the employing
26 school in the instructional practices used by the school.

27 (h) Payment for time spent in training and travel. (1) For
28 any award year, an institution may pay students for a reasonable

1 amount of time spent for training that is directly related to
2 FWS employment.

3 (2) Beginning with the 1999-2000 award year, an institution
4 may pay students for a reasonable amount of time spent for
5 travel that is directly related to employment in community
6 service activities (including tutoring in reading and family
7 literacy activities).

8 (i) Flexibility in the event of a major disaster. (1)
9 General. An institution located in any area affected by a major
10 disaster may make FWS payments to disaster-affected students for
11 the period of time (not to exceed the award period) in which the
12 students were prevented from fulfilling their FWS obligations.
13 The FWS payments--

14 (i) May be made to disaster-affected students for an
15 amount equal to or less than the amount of FWS wages the
16 students would have been paid had the students been able to
17 complete the work obligation necessary to receive the funds.

18 (ii) May not be made to any student who was not eligible
19 for FWS or was not completing the work obligation necessary to
20 receive the funds, or had already separated from their
21 employment prior to the occurrence of the major disaster.

22 (iii) Must meet the matching requirements of \$675.26,
23 unless those requirements are waived by the Secretary.

24 (2) Definitions. The following definitions apply to this
25 section:

26 (i) Disaster-affected student means a student enrolled at
27 an institution who--

28 (A) Received an FWS award for the award period during
29 which a major disaster occurred;

1 (B) Earned FWS wages from an institution for that award
2 period;

3 (C) Was prevented from fulfilling his or her FWS
4 obligation for all or part of the FWS award period because of
5 the major disaster; and

6 (D) Was unable to be reassigned to another FWS job.

7 (ii) Major disaster is defined in section 102(2) of the
8 Robert T. Stafford Disaster Relief and Emergency Assistance Act
9 (42 U.S.C. 5122(2)).

10 **Statutory language:**

11 **(c) FLEXIBLE USE OF FUNDS.**—An eligible institution may,
12 upon the request of a student, make payments to the student
13 under this part by crediting the student’s account at the
14 institution or by making a direct deposit to the student’s
15 account at a depository institution. An eligible institution may
16 only credit the student’s account at the institution for (1)
17 tuition and fees, (2) in the case of institutionally owned
18 housing, room and board, and (3) other institutionally provided
19 goods and services.

20 **(d) FLEXIBILITY IN THE EVENT OF A MAJOR DISASTER.—**

21 **(1) IN GENERAL.**—In the event of a major disaster, an
22 eligible institution located in any area affected by such major
23 disaster, as determined by the Secretary, may make payments
24 under this part to disaster-affected students, for the period of
25 time (not to exceed one academic year) in which the disaster-
26 affected students were prevented from fulfilling the students’
27 work-study obligations as described in paragraph (2) (A) (iii), as
28 follows:

1 (A) Payments may be made under this part to disaster-
2 affected students in an amount equal to or less than the amount
3 of wages such students would have been paid under this part had
4 the students been able to complete the work obligation necessary
5 to receive work study funds.

6 (B) Payments shall not be made to any student who was not
7 eligible for work study or was not completing the work
8 obligation necessary to receive work study funds under this part
9 prior to the occurrence of the major disaster.

10 (C) Any payments made to disaster-affected students under
11 this subsection shall meet the matching requirements of section
12 443, unless such matching requirements are waived by the
13 Secretary.

14 (2) DEFINITIONS.—In this subsection:

15 (A) The term 'disaster-affected student' means a student
16 enrolled at an eligible institution who—

17 (i) received a work-study award under this section for the
18 academic year during which a major disaster occurred; (ii)
19 earned Federal work-study wages from such eligible institution
20 for such academic year;

21 (iii) was prevented from fulfilling the student's work-
22 study obligation for all or part of such academic year due to
23 such major disaster; and

24 (iv) was unable to be reassigned to another work-study job.

25 (B) The term 'major disaster' has the meaning given such
26 term in section 102(2) of the Robert T. Stafford Disaster Relief
27 and Emergency Assistance Act (42 U.S.C. 5122(2)).

28

1 **Issue Paper #8**

2 **Origin:** HEOA

3 **Issue:** Work Colleges

4 **Statutory cites:** Section 448 of the HEA

5 **Regulatory cites:** §675.41

6 **Summary of issue:** The HEOA replaces the term "work-learning"
7 each place it appears with "work-learning-service."

8 In addition, the definitions in section 448(e) of the HEA
9 are revised as follows:

10 The term "work college" means an eligible institution that:

- 11 • has been a public or private nonprofit, four-year, degree-
12 granting institution with a commitment to community
13 service;
- 14 • has operated a comprehensive work-learning-service program
15 for at least two years;
- 16 • requires students, including at least one-half of all
17 students who are enrolled on a full-time basis, to
18 participate in a comprehensive work-learning-service
19 program for at least five hours each week, or at least 80
20 hours during each period of enrollment, except summer
21 school, unless the student is engaged in an institutionally
22 organized or approved study abroad or externship program;
23 and
- 24 • provides students participating in the comprehensive work-
25 learning-service program with the opportunity to contribute
26 to their education and to the welfare of the community as a
27 whole.

1 The term "comprehensive student work-learning-service program"
2 means a student work-learning-service program that

- 3 • is an integral and stated part of the institution's
4 educational philosophy and program;
- 5 • requires participation of all resident students for
6 enrollment and graduation;
- 7 • includes learning objectives, evaluation, and a record of
8 work performance as part of the student's college record;
- 9 • provides programmatic leadership by college personnel at
10 levels comparable to traditional academic programs;
- 11 • recognizes the educational role of work-learning-service
12 supervisors; and
- 13 • includes consequences for nonperformance or failure in the
14 work-learning-service program similar to the consequences
15 for failure in the regular academic program.

16 **Updated information since 4/14-16 meetings:** The committee
17 reached tentative agreement on Section 675.41 that would be
18 amended to implement the requirement in section 448(e) of the
19 HEOA to revise two definitions to clarify how institutions
20 qualify as work colleges. The word "service" is added after
21 work-learning in subpart C as required.

22 **Tentative agreement: Yes**

23 **Regulatory language:**

24 **§675.41 Special definitions.**

25 The following definitions apply to this subpart:

26 (a) *Work-college:* The term "work-college" means an eligible
27 institution that-

- 1 (1) Is a public or private nonprofit, four-year, degree-
2 granting institution with a commitment to community service;
- 3 (2) Has operated a comprehensive work-learning-service
4 program for at least two years;
- 5 (3) Requires ~~All~~ resident students, including at least one-
6 half of all students who are enrolled on a full-time basis,
7 ~~reside on campus~~ to participate in a comprehensive work-
8 learning-service program for at least five hours each week, or
9 at least 80 hours during each period of enrollment, except
10 summer school, unless the student is engaged in an
11 institutionally organized or approved study abroad or externship
12 program; and
- 13 (4) Provides students participating in the comprehensive
14 work-learning service program with the opportunity to contribute
15 to their education and to the welfare of the community as a
16 whole.
- 17 (b) Comprehensive student work-learning-~~service~~ program: A
18 student work-learning-service program that-
- 19 (1) Is an integral and stated part of the institution's
20 educational philosophy and program;
- 21 (2) Requires participation of all resident students for
22 enrollment, ~~participation~~, and graduation;
- 23 (3) Includes learning objectives, evaluation, and a record
24 of work performance as part of the student's college record;
- 25 (4) Provides programmatic leadership by college personnel
26 at levels comparable to traditional academic programs;
- 27 (5) Recognizes the educational role of work-learning-
28 service supervisors; and

1 (6) Includes consequences for nonperformance or failure in
2 the work-learning-service program similar to the consequences
3 for failure in the regular academic program.

4 **§675.43 Purpose**

5 The purpose of the Work-Colleges program is to recognize,
6 encourage, and promote the use of comprehensive work-learning-
7 service programs as a valuable educational approach when it is
8 an integral part of the institution's educational program and a
9 part of a financial plan that decreases reliance on grants and
10 loans and to encourage students to participate in community
11 service activities.

12 **§675.44 Program Description**

13 (a) An institution that satisfies the definition of "work-
14 college" in §675.41(a) and wishes to participate in the Work-
15 Colleges program must apply to the Secretary at the time and in
16 the manner prescribed by the Secretary.

17 (b) An institution may expend funds separately, or in
18 combination with other eligible institutions, to provide work-
19 learning-service opportunities for currently enrolled students.

20 (c) For any given award year, Federal funds allocated and
21 reallocated for that award year under sections 442 and 462 of
22 the HEA may be transferred for the purpose of carrying out the
23 Work-Colleges program to provide flexibility in strengthening
24 the self-help-through-work element in financial aid packaging.

25 **§675.45 Allowable Cost, Federal Share, and Institutional Share**

26 (a) * * *

27 (1) Support the educational costs of qualified students
28 through self-help payments or credits provided under the work-

1 learning-service program within the limits of part F of title IV
2 of the HEA.

3 (2) Promote the work-learning-service experience as a tool
4 of postsecondary education, financial self-help, and community
5 service-learning opportunities.

6 (3) Carry out activities in sections 443 or 446 of the HEA.

7 (4) Administer, develop, and assess comprehensive work-
8 learning-service programs including-

9 (i) Community-based work-learning-service alternatives that
10 expand opportunities for community service and career-related
11 work; and

12 (5) Coordinate and carry out joint projects and activities
13 to promote work service learning.

14 * * * * *

15 **Statutory language:**

16 (a) PURPOSE.—The purpose of this section is to recognize,
17 encourage, and promote the use of comprehensive work-learning-
18 service programs as a valuable educational approach when it is
19 an integral part of the institution’s educational program and a
20 part of a financial plan which decreases reliance on grants and
21 loans.

22 (b) SOURCE AND USE FUNDS.—

23 (1) SOURCE OF FUNDS.—In addition to the sums appropriated
24 under subsection (f), funds allocated to the institution under
25 part C and part E of this title may be transferred for use under
26 this section to provide flexibility in strengthening the self-
27 help-through-work element in financial aid packaging.

1 (2) ACTIVITIES AUTHORIZED.—From the sums appropriated
2 pursuant to subsection (f), and from the funds available under
3 paragraph (1), eligible institutions may, following approval of
4 an application under subsection (c) by the Secretary—

5 (A) support the educational costs of qualified students
6 through self-help payments or credits provided under the work-
7 learning-service program of the institution within the limits of
8 part F of this title;

9 (B) promote the work-learning-service experience as a tool
10 of postsecondary education, financial self-help and community
11 service-learning opportunities;

12 (C) carry out activities described in section 443 or 446;

13 (D) be used for the administration, development and
14 assessment of comprehensive work-learning- service programs,
15 including—

16 (i) community-based work-learning-service alternatives that
17 expand opportunities for community service and career-related
18 work; and

19 (ii) alternatives that develop sound citizenship, encourage
20 student persistence, and make optimum use of assistance under
21 this part in education and student development;

22 (E) coordinate and carry out joint projects and activities
23 to promote work service learning; and

24 (F) carry out a comprehensive, longitudinal study of
25 student academic progress and academic and career outcomes,
26 relative to student self-sufficiency in financing their higher
27 education, repayment of student loans, continued community
28 service, kind and quality of service performed, and career
29 choice and community service selected after graduation.

1 (c) APPLICATION.—Each eligible institution may submit an
2 application for funds authorized by subsection (f) to use funds
3 under subsection (b) (1) at such time and in such manner as the
4 Secretary, by regulation, may reasonably require.

5 (d) MATCH REQUIRED.—Funds made available to work-colleges
6 pursuant to this section shall be matched on a dollar-for-dollar
7 basis from non-Federal sources.

8 (e) DEFINITIONS.—For the purpose of this section—

9 (1) the term 'work college' means an eligible institution
10 that—

11 (A) has been a public or private nonprofit, four-year,
12 degree-granting institution with a commitment to community
13 service;

14 (B) has operated a comprehensive work-learning-service
15 program for at least two years;

16 (C) requires students, including at least one-half of all
17 students who are enrolled on a full-time basis, to participate
18 in a comprehensive work-learning-service program for at least
19 five hours each week, or at least 80 hours during each period of
20 enrollment, except summer school, unless the student is engaged
21 in an institutionally organized or approved study abroad or
22 externship program; and

23 (D) provides students participating in the comprehensive
24 work-learning-service program with the opportunity to contribute
25 to their education and to the welfare of the community as a
26 whole; and

27 (2) the term 'comprehensive student work-learning-service
28 program' means a student work-learning-service program that—

1 (A) is an integral and stated part of the institution's
2 educational philosophy and program;

3 (B) requires participation of all resident students for
4 enrollment and graduation;

5 (C) includes learning objectives, evaluation, and a record
6 of work performance as part of the student's college record;

7 (D) provides programmatic leadership by college personnel
8 at levels comparable to traditional academic programs;

9 (E) recognizes the educational role of work-learning-
10 service supervisors; and

11 (F) includes consequences for nonperformance or failure in
12 the work-learning-service program similar to the consequences
13 for failure in the regular academic program.

14 (f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized
15 to be appropriated to carry out this section such sums as may be
16 necessary for fiscal year 2009 and each of the five succeeding
17 fiscal years.

18

1 **Issue Paper #9**

2 **Origin:** HEOA

3 **Issue:** 90/10 (non-Title IV revenue requirement)

4 **Statutory cites:** Section 487(d) of the HEA

5 **Regulatory cites:** §§600.5(a)(8), (d), (f), and (g);
6 §668.23(d)(4)

7 DCL GEN-08-12 cite: **Pages 68-69**

8 **Summary of issue:** The HEOA moves the 90/10 Rule to the PPA
9 from Title I of the HEA (the 90/10 Rule applies only to
10 proprietary institutions and requires those institutions to
11 derive at least 10 percent of their revenue from non-Title IV
12 sources). As a result, an institution that now violates the
13 90/10 Rule for one year would no longer lose its eligibility to
14 participate in the Title IV programs. Instead, the
15 institution's participation becomes provisional for two fiscal
16 years. However, if the institution does not satisfy the 90/10
17 Rule for two consecutive fiscal years, it loses its eligibility
18 to participate in the Title IV programs for at least two fiscal
19 years.

20 If an institution fails to satisfy the 90/10 Rule, the HEOA
21 requires the Department to publicly disclose on the College
22 Navigator Website the identity of that institution and the
23 extent to which the institution failed to satisfy the rule. In
24 addition, no later than July 1 of each year, the Secretary must
25 submit to Congress a report that contains, for each proprietary
26 institution, the amount and percentage of the institution's
27 revenues from Title IV sources and non-Title IV sources, as
28 provided by the institution in its audited financial statements.

1 In calculating the revenue percentage, the HEOA requires an
2 institution to use the cash basis of accounting, except for
3 loans made to students by the institution, and provides that any
4 Title IV program funds that are disbursed or delivered to or on
5 behalf of a student are presumed to pay the student's tuition,
6 fees, or other institutional charges, unless the tuition, fees,
7 or other charges are satisfied by:

8 • grant funds from non-Federal public agencies or private
9 sources independent of the institution;

10 • funds provided under a contractual arrangement with a
11 Federal, State, or local government agency for the purpose of
12 providing job training to low-income individuals in need of that
13 training;

14 • funds used by a student from savings plans for educational
15 expenses established by or on behalf of the student that qualify
16 for special tax treatment under the Internal Revenue Code; and

17 • institutional scholarships that count toward the 10 percent
18 revenue requirement.

19 The HEOA specifies other sources of revenue that count
20 toward the 10 percent requirement after applying the presumption
21 that Title IV funds are used to pay the student's tuition, fees,
22 and other institutional charges. Among the sources, an
23 institution may count:

24 • revenue earned from a non-Title IV program of study, as long
25 as the program is approved by the State, accredited, or provides
26 an industry-recognized credential or certificate;

27 • institutional aid to students. *For loans* made to students by
28 the institution from July 1, 2008, but before July 1, 2012, the
29 net present value of the loans made during a fiscal year if the
30 loans are evidenced by promissory notes, issued at intervals

1 related to the institution's enrollment periods, and are subject
2 to regular loan repayments and collections. For loans made on
3 or after July 1, 2012, only the amount of loan repayments the
4 institution receives during a fiscal year, excluding repayment
5 on any loans for which the institution previously used the net
6 present value in its 90/10 calculation.

7 *For scholarships*, only those provided by the institution in
8 the form of monetary aid or tuition discounts based on the
9 academic achievements or financial need of students, as long as
10 the scholarships are disbursed during each fiscal year from an
11 established restricted account, and only to the extent that
12 funds in that account represent designated funds from an outside
13 source or income earned on those funds; and

14 • the proceeds of Unsubsidized Stafford Loans that exceed the
15 loan limits which were in effect on May 6, 2008, the day before
16 the enactment of the Ensuring Continued Access to Student Loans
17 Act of 2008 (ECASLA). This provision applies to any
18 Unsubsidized Stafford Loan received by a student on or after
19 July 1, 2008, but before July 1, 2011.

20 The HEOA specifies the types or amounts of funds that are
21 excluded from revenues under the 90/10 calculation. Excluded
22 from revenues are:

23 • the amount of funds the institution received under the FWS
24 Program, unless it used those funds to pay for a student's
25 institutional charges;

26 • the amount of funds the institution received under LEAP;

27 • the amount of funds provided by the institution as matching
28 funds under the Title IV programs;

29 • the amount of funds provided by the institution for a Title
30 IV program that are required to be refunded or returned; and

1 • the amount charged for books, supplies, and equipment,
2 unless the institution includes that amount as tuition, fees, or
3 other institutional charges.

4 Updated information since 3/2-4 meetings:

5 The 90/10 requirements are removed from §600.5.

6 The PPA is amended by adding the 90/10 requirement.

7 A new section 668.28 is added to implement the statutory
8 requirements.

9 A new Appendix C is added to illustrate the 90/10
10 calculation.

11 Updated information since 4/14-16 meetings:

12 The terms "industry recognized credential" and
13 "institutional loan" are more fully described.

14 Loan amounts in excess of ECASLA loan limits are prorated
15 by payment period.

16 If an institution uses the 50% NPV alternative, it may not
17 sell the loans for two years after the loans entered repayment.

18 Tentative Agreement:

19 Regulatory language:

20 ***§600.5 Proprietary institution of higher education.***

21 (a) *_____*_____*

22 (6) Is accredited; and

23 (7) Has been in existence for at least two years. ~~and~~

24 ~~(8) Has no more than 90 percent of its revenues derived~~
25 ~~from title IV, HEA program funds, as determined under paragraph~~

26 ~~(d) of this section.~~

1 ~~(b) (1) The Secretary considers an institution to have been~~
2 ~~in existence for two years only if~~

3 * ~~_____~~ * ~~_____~~ * ~~_____~~ * ~~_____~~ *

4 ~~_____ (d) (1) An institution satisfies the requirement contained~~
5 ~~in paragraph (a) (8) of this section by examining its revenues~~
6 ~~under the following formula for its latest complete fiscal year:~~

7 ~~_____ Title IV, HEA program funds the institution used to satisfy~~
8 ~~its students' tuition, fees, and other institutional charges to~~
9 ~~students~~

10 ~~_____ The sum of revenues including title IV, HEA program funds~~
11 ~~generated by the institution from: tuition, fees, and other~~
12 ~~institutional charges for students enrolled in eligible programs~~
13 ~~as defined in 34 CFR 668.8; and activities conducted by the~~
14 ~~institution, to the extent not included in tuition, fees, and~~
15 ~~other institutional charges, that are necessary for the~~
16 ~~education or training of its students who are enrolled in those~~
17 ~~eligible programs.~~

18 ~~_____ (2) An institution must use the cash basis of accounting~~
19 ~~when calculating the amount of title IV, HEA program funds in~~
20 ~~the numerator and the total amount of revenue generated by the~~
21 ~~institution in the denominator of the fraction contained in~~
22 ~~paragraph (d) (1) of this section.~~

23 ~~_____ (3) Under the cash basis of accounting~~

24 ~~_____ (i) In calculating the amount of revenue generated by the~~
25 ~~institution from institutional loans, the institution must~~
26 ~~include only the amount of loan repayments received by the~~
27 ~~institution during the fiscal year; and~~

28 ~~_____ (ii) In calculating the amount of revenue generated by the~~
29 ~~institution from institutional scholarships, the institution~~

~~1 must include only the amount of funds it disbursed during the
2 fiscal year from an established restricted account and only to
3 the extent that the funds in that account represent designated
4 funds from an outside source or income earned on those funds.~~

~~5 (e) With regard to the formula contained in paragraph(d) (1)
6 of this section~~

~~7 (1) The institution may not include as title IV, HEA
8 program funds in the numerator nor as revenue generated by the
9 institution in the denominator~~

~~10 (i) The amount of funds it received under the Federal Work
11 Study (FWS) Program, unless the institution used those funds to
12 pay a student's institutional charges in which case the FWS
13 program funds used to pay those charges would be included in the
14 numerator and denominator.~~

~~15 (ii) The amount of funds it received under the Leveraging
16 Educational Assistance Partnership (LEAP) Program. (The LEAP
17 Program was formerly called the State Student Incentive Grant or
18 SSIG Program.);~~

~~19 (iii) The amount of institutional funds it used to match
20 title IV, HEA program funds;~~

~~21 (iv) The amount of title IV, HEA program funds that must be
22 refunded or returned under §668.22; or~~

~~23 (v) The amount charged for books, supplies, and equipment
24 unless the institution includes that amount as tuition, fees, or
25 other institutional charges.~~

~~26 (2) In determining the amount of title IV, HEA program
27 funds received by the institution under the cash basis of
28 accounting, except as provided in paragraph (e) (3) of this
29 section, the institution must presume that any title IV, HEA~~

~~1 program funds disbursed or delivered to or on behalf of a
2 student will be used to pay the student's tuition, fees, or
3 other institutional charges, regardless of whether the
4 institution credits those funds to the student's account or pays
5 those funds directly to the student, and therefore must include
6 those funds in the numerator and denominator.~~

~~7 (3) In paragraph (c) (2) of this section, the institution
8 may not presume that title IV, HEA program funds were used to
9 pay tuition, fees, and other institutional charges to the extent
10 that those charges were satisfied by—~~

~~11 (i) Grant funds provided by non-Federal public agencies, or
12 private sources independent of the institution;~~

~~13 (ii) Funds provided under a contractual arrangement
14 described in §600.7(d), or~~

~~15 (iii) Funds provided by State prepaid tuition plans.~~

~~16 (4) With regard to the denominator, revenue generated by
17 the institution from activities it conducts, that are necessary
18 for its students' education or training, includes only revenue
19 from those activities that—~~

~~20 (i) Are conducted on campus or at a facility under the
21 control of the institution;~~

~~22 (ii) Are performed under the supervision of a member of the
23 institution's faculty; and~~

~~24 (iii) Are required to be performed by all students in a
25 specific educational program at the institution.~~

~~26 (f) An institution must notify the Secretary within 90 days
27 following the end of the fiscal year used in paragraph (d)(1) of
28 this section if it fails to satisfy the requirement contained in
29 paragraph (a)(8) of this section.~~

~~(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a) (8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d) (1) of this section.~~

(hd) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

* * * * *

§668.14 Program participation agreement.

* * *

(b) By entering into a program participation agreement, an institution agrees that—

* * *

~~(16) Reserved. For a proprietary institution, the institution will derive at least ten 10 percent of its revenues for each fiscal year from sources other than title IV, HEA program funds, as provided in §668.28 (a) and (b), or be subject to sanctions described in §668.28 (c)-);~~

* * * * *

§668.28 Non-title IV revenue (90/10).

(a) General Calculating the revenue percentage. (1) Calculating the revenue percentage. A proprietary institution determines whether it satisfies the requirement in §668.14(b) (16) that at least ten10 percent of its revenue is derived from sources other than title IV, HEA program funds by

1 using the formula in Appendix C of this subpart to calculate
2 its revenue percentage for its latest complete fiscal year.

3 (2) Cash basis accounting. Except for institutional loans
4 made to students under paragraph (a)(5)(i) of this section, the
5 institution must use the cash basis of accounting in calculating
6 its revenue percentage.

7 (3) Revenue generated from programs and activities. The
8 institution must consider as revenue only those funds it
9 generates from--

10 (i) Tuition, fees, and other institutional charges for
11 students enrolled in eligible programs as defined in §668.8;

12 (ii) Activities conducted by the institution that are
13 necessary for the education and training of its students
14 provided those activities are--

15 (A) Conducted on campus or at a facility under the
16 institution's control;

17 (B) Performed under the supervision of a member of the
18 institution's faculty; and

19 (C) Required to be performed by all students in a specific
20 educational program at the institution; and

21 (iii) Funds paid by a student, or on behalf of a student
22 by a party other than the institution, for an education or
23 training program that is not eligible under §668.8 if the
24 program---

25 (A) Is approved or licensed by the appropriate State
26 agency;

27 (B) Is accredited by an accrediting agency recognized by
28 the Secretary under 34 CFR ~~P~~part 602; ~~or~~

1 (C) Provides an industry-recognized credential or
2 certification, or prepares students to take an examination for
3 an industry-recognized credential or certification issued by an
4 independent third party;

5 (D) Provides training needed for students to maintain
6 State licensing requirements; or

7 (E) Provides training needed for students to meet
8 additional licensing requirements for specialized training for
9 practitioners that already meet the general licensing
10 requirements in that field.

11 (4) Application of funds. The institution must presume
12 that any title IV, HEA program funds it disburses, or delivers,
13 to or on behalf of a student will be used to pay the student's
14 tuition, fees, or institutional charges, regardless of whether
15 the institution credits the funds to the student's account or
16 pays the funds directly to the student, except to the extent
17 that the student's tuition, fees, or other charges are satisfied
18 by---

19 (i) Grant funds provided by non-Federal public agencies or
20 private sources independent of the institution;

21 (ii) Funds provided under a contractual arrangement with a
22 Federal, State, or local government agency for the purpose of
23 providing job training to low-income individuals who need that
24 training;

25 (iii) Funds used by a student from a savings plan for
26 educational expenses established by or on behalf of the student
27 if the saving plan qualifies for special tax treatment under the
28 Internal Revenue Code of 1986; or

29 (iv) Institutional scholarships as provided under
30 paragraph (a) (5) (iv) of this section.

1 (5) Revenue generated from institutional aid. The
2 institution must include the following institutional aid as
3 revenue:

4 (i) For loans made to students, including funds advanced
5 to students under installment sales contracts, on or after July
6 1, 2008 and prior to July 1, 2012, include as revenue the net
7 present value of the loans made to students during the fiscal
8 year, as calculated under paragraph (b) of this section, if the
9 loans---

10 (A) Are bona fide as evidenced by standalone repayment
11 agreements between the students and the institution that are
12 enforceable promissory notes or installment sales contracts;

13 (B) Are issued at intervals related to the institution's
14 enrollment periods; and

15 (C) Are subject to regular loan repayments and collections
16 by the institution; and

17 (D) Are separate from the enrollment contracts signed by
18 the students.

19 (ii) For loans made to students before July 1, 2008,
20 include as revenue only the amount of payments made on those
21 loans that the institution received during the fiscal year~~r~~.

22 (iii) For loans made to students on or after July 1, 2012,
23 include as revenue only the amount of payments made on those
24 loans that the institution received during the fiscal year~~r~~; and.

25 (iv) For scholarships provided by the institution in the
26 form of monetary aid or tuition discount and based on the
27 academic achievement or financial need of its students, include
28 as revenue the amount disbursed to students during the fiscal
29 year. The scholarships must be disbursed from an established

1 restricted account and only to the extent that the funds in that
2 account represent designated funds from an outside source or
3 income earned on those funds.

4 (6) Revenue generated from loan funds in excess of loan
5 limits prior to the Ensuring Continued Access to Student Loans
6 Act of 2008 (ECASLA). For each student who receives an
7 unsubsidized loan under the FFEL or Direct Loan programs on or
8 after July 1, 2008 and prior to July 1, 2011, the amount of the
9 loan disbursement for a payment period that exceeds the
10 disbursement for which the student would have been eligible for
11 that payment period under the loan limit in effect on the day
12 prior to enactment of the ECASLA is included as revenue from a
13 source other than title IV, HEA program funds but only to the
14 extent that the excess amount pays for tuition, fees, or
15 institutional charges remaining on the student's account after
16 title IV, HEA program funds are applied.

17 (7) Funds excluded from revenues. For the fiscal year,
18 the institution does not include--

19 (i) The amount of Federal Work Study (FWS) wages paid
20 directly to the student. However, if the institution credits
21 the student's account with FWS funds, those funds are included
22 as revenue;

23 (ii) The amount of funds received by the institution from
24 a State under the LEAP, SLEAP, or GAP programs;

25 (iii) The amount of institutional funds used to match
26 title IV, HEA program funds;

27 (iv) The amount of title IV, HEA program funds refunded or
28 returned under §668.22, including funds refunded or returned
29 under paragraph (a) (6) of this section; or

1 (v) The amount the student is charged for books, supplies,
2 and equipment unless the institution includes that amount as
3 tuition, fees, or other institutional charges.

4 (b) Net Present Value (NPV). (1) As illustrated in
5 Appendix C of this subpart, an institution calculates the NPV
6 of the loans it made under paragraph (a)(5)(i) of this section
7 by---

8 (i) Using the formula, $NPV = \text{sum of the discounted cash}$
9 flows $R^t / (1+i)^t$, where--

10 (A) The variable "i" is the discount rate. For purposes
11 of this section, an institution must use the most recent annual
12 inflation rate as the discount rate;

13 (B) The variable "t" is time or period of the cash flow,
14 in years, from the time the loan entered repayment; and

15 (C) The variable " R^t " is the net cash flow at time or
16 period t; and

17 (ii) Applying the NPV formula to From the loans made
18 during the fiscal year by--

19 (A) If the loans have substantially the same repayment
20 period, using that repayment period for the range of values of
21 variable "t"; or

22 (B) Grouping the loans by repayment period and using the
23 repayment period for each group for the range of values of
24 variable "t"; and

25 (C) For each group of loans, as applicable, multiplying
26 the total annual payments due on the loans by the institution's
27 loan collection rate (e.g., the total amount of payments
28 collected divided by the total amount of payments due). The

1 resulting amount is used for variable "R" in each period "t",
2 for each group of loans that a NPV is calculated; ~~or.~~

3 (2) Instead of performing the calculations in paragraph
4 (b) (1) of this section, using 50 percent of the total amount of
5 loans that the institution made during the fiscal year as the
6 NPV. However, if the institution chooses to use this 50 percent
7 calculation, the institution may not sell any of these loans
8 until they have been in repayment for at least two years.

9 (c) Sanctions. If an institution does not derive at least
10 ten¹⁰ percent of its revenue from sources other than title IV,
11 HEA program funds--

12 (1) For two consecutive fiscal years, it loses its
13 eligibility to participate in the title IV, HEA programs for at
14 least two fiscal years. To regain eligibility, the institution
15 must demonstrate that it complied with the State licensure and
16 accreditation requirements under 34 CFR 600.5(a) (4) and (a) (6),
17 and the financial responsibility requirements under subpart L of
18 this part, for a minimum of two fiscal years after the fiscal
19 year it became ineligible; or

20 (2) For any fiscal year, it becomes provisionally
21 certified under §668.13(c) (1) (ii) for the two fiscal years after
22 the fiscal year it failed to satisfy the revenue requirement.
23 However, the institution's provisional certification terminates
24 on--

25 (i) The expiration date of institution's program
26 participation agreement that was in effect on the date the
27 Secretary determined the institution failed this requirement; or

28 (ii) The date the institution loses its eligibility to
29 participate under paragraph (c) (1) of this section; and

1 (3) It must notify the Secretary no later than 45 days
2 after the end of its fiscal year that it failed to meet this
3 requirement.

4 (Authority:)

5 **§668.13 Certification procedures**

6 * * *

7 (c) *Provisional certification.* (1) (i) The Secretary may
8 provisionally certify an institution if—

9 ~~(A)~~ The institution seeks initial participation in a Title
10 IV, HEA program;

11 ~~(B)~~ The institution is an eligible institution that has
12 undergone a change in ownership that results in a change in
13 control according to the provisions of 34 CFR part 600;

14 ~~(C)~~ The institution is a participating institution—
15 (1A) That is applying for a certification that the
16 institution meets the standards of this subpart;

17 (2B) That the Secretary determines has jeopardized its
18 ability to perform its financial responsibilities by not meeting
19 the factors of financial responsibility under §668.15 or the
20 standards of administrative capability under §668.16; and

21 (3E) Whose participation has been limited or suspended
22 under subpart G of this part, or voluntarily enters into
23 provisional certification;

24 ~~(D)~~ The institution seeks a renewal of participation in a
25 Title IV, HEA program after the expiration of a prior period of
26 participation in that program; or

27 ~~(E)~~ The institution is a participating institution that
28 was accredited or preaccredited by a nationally recognized

1 accrediting agency on the day before the Secretary withdrew the
2 Secretary's recognition of that agency according to the
3 provisions contained in 34 CFR part 603.

4 (ii) A proprietary institution's certification
5 automatically becomes provisional if it does not derive at least
6 10 percent of its revenue for any fiscal year from sources
7 other than title IV, HEA program funds, as required under
8 §668.14(b)(16).

9 **Statutory language:**

10 (d) IMPLEMENTATION OF NON-TITLE IV REVENUE REQUIREMENT.—

11 (1) CALCULATION.—In making calculations under subsection
12 (a)(24), a proprietary institution of higher education shall—

13 (A) use the cash basis of accounting, except in the case of
14 loans described in subparagraph (D)(i) that are made by the
15 proprietary institution of higher education;

16 (B) consider as revenue only those funds generated by the
17 institution from—

18 (i) tuition, fees, and other institutional charges for
19 students enrolled in programs eligible for assistance under this
20 title;

21 (ii) activities conducted by the institution that are
22 necessary for the education and training of the institution's
23 students, if such activities are—

24 (I) conducted on campus or at a facility under the control
25 of the institution;

26 (II) performed under the supervision of a member of the
27 institution's faculty; and

1 (III) required to be performed by all students in a
2 specific educational program at the institution; and

3 (iii) funds paid by a student, or on behalf of a student by
4 a party other than the institution, for an education or training
5 program that is not eligible for funds under this title, if the
6 program—

7 (I) is approved or licensed by the appropriate State
8 agency;

9 (II) is accredited by an accrediting agency recognized by
10 the Secretary; or

11 (III) provides an industry-recognized credential or
12 certification;

13 (C) presume that any funds for a program under this title
14 that are disbursed or delivered to or on behalf of a student
15 will be used to pay the student's tuition, fees, or other
16 institutional charges, regardless of whether the institution
17 credits those funds to the student's account or pays those funds
18 directly to the student, except to the extent that the student's
19 tuition, fees, or other institutional charges are satisfied by—

20 (i) grant funds provided by non-Federal public agencies or
21 private sources independent of the institution;

22 (ii) funds provided under a contractual arrangement with a
23 Federal, State, or local government agency for the purpose of
24 providing job training to low-income individuals who are in need
25 of that training;

26 (iii) funds used by a student from savings plans for
27 educational expenses established by or on behalf of the student
28 and which qualify for special tax treatment under the Internal
29 Revenue Code of 1986; or

1 (iv) institutional scholarships described in subparagraph
2 (D)(iii);

3 (D) include institutional aid as revenue to the school only
4 as follows:

5 (i) in the case of loans made by a proprietary institution
6 of higher education on or after July 1, 2008 and prior to July
7 1, 2012, the net present value of such loans made by the
8 institution during the applicable institutional fiscal year
9 accounted for on an accrual basis and estimated in accordance
10 with generally accepted accounting principles and related
11 standards and guidance, if the loans-

12 (I) are bona fide as evidenced by enforceable promissory
13 notes;

14 (II) are issued at intervals related to the institution's
15 enrollment periods; and

16 (III) are subject to regular loan repayments and
17 collections;

18 (ii) in the case of loans made by a proprietary institution
19 of higher education on or after July 1, 2012, only the amount of
20 loan repayments received during the applicable institutional
21 fiscal year, excluding repayments on loans made and accounted
22 for as specified in clause (i); and

23 (iii) in the case of scholarships provided by a proprietary
24 institution of higher education, only those scholarships
25 provided by the institution in the form of monetary aid or
26 tuition discounts based upon the academic achievements or
27 financial need of students, disbursed during each fiscal year
28 from an established restricted account, and only to the extent
29 that funds in that account represent designated funds from an
30 outside source or from income earned on those funds;

1 (E) in the case of each student who receives a loan on or
2 after July 1, 2008, and prior to July 1, 2011, that is
3 authorized under section 428H or that is a Federal Direct
4 Unsubsidized Stafford Loan, treat as revenue received by the
5 institution from sources other than funds received under this
6 title, the amount by which the disbursement of such loan
7 received by the institution exceeds the limit on such loan in
8 effect on the day before the date of enactment of the Ensuring
9 Continued Access to Student Loans Act of 2008; and

10 (F) exclude from revenues—

11 (i) the amount of funds the institution received under part
12 C, unless the institution used those funds to pay a student's
13 institutional charges;

14 (ii) the amount of funds the institution received under
15 subpart 4 of part A;

16 (iii) the amount of funds provided by the institution as
17 matching funds for a program under this title;

18 (iv) the amount of funds provided by the institution for a
19 program under this title that are required to be refunded or
20 returned; and

21 (v) the amount charged for books, supplies, and equipment,
22 unless the institution includes that amount as tuition, fees, or
23 other institutional charges.

24 (2) SANCTIONS.—

25 (A) INELIGIBILITY.—A proprietary institution of higher
26 education that fails to meet a requirement of subsection (a) (24)
27 for two consecutive institutional fiscal years shall be
28 ineligible to participate in the programs authorized by this
29 title for a period of not less than two institutional fiscal

1 years. To regain eligibility to participate in the programs
2 authorized by this title, a proprietary institution of higher
3 education shall demonstrate compliance with all eligibility and
4 certification requirements under section 498 for a minimum of
5 two institutional fiscal years after the institutional fiscal
6 year in which the institution became ineligible.

7 (B) ADDITIONAL ENFORCEMENT.—In addition to such other means
8 of enforcing the requirements of this title as may be available
9 to the Secretary, if a proprietary institution of higher
10 education fails to meet a requirement of subsection (a) (24) for
11 any institutional fiscal year, then the institution's
12 eligibility to participate in the programs authorized by this
13 title becomes provisional for the two institutional fiscal years
14 after the institutional fiscal year in which the institution
15 failed to meet the requirement of subsection (a) (24), except
16 that such provisional eligibility shall terminate—

17 (i) on the expiration date of the institution's program
18 participation agreement under this subsection that is in effect
19 on the date the Secretary determines that the institution failed
20 to meet the requirement of subsection (a) (24); or

21 (ii) in the case that the Secretary determines that the
22 institution failed to meet a requirement of subsection (a) (24)
23 for two consecutive institutional fiscal years, on the date the
24 institution is determined ineligible in accordance with
25 subparagraph (A).

26 (3) PUBLICATION ON COLLEGE NAVIGATOR WEBSITE.—The Secretary
27 shall publicly disclose on the College Navigator website—

28 (A) the identity of any proprietary institution of higher
29 education that fails to meet a requirement of subsection
30 (a) (24); and

1 (B) the extent to which the institution failed to meet such
2 requirement.

3 (4) REPORT TO CONGRESS.—Not later than July 1, 2009, and
4 July 1 of each succeeding year, the Secretary shall submit to
5 the authorizing committees a report that contains, for each
6 proprietary institution of higher education that receives
7 assistance under this title, as provided in the audited
8 financial statements submitted to the Secretary by each
9 institution pursuant to the requirements of subsection (a) (24)—

10 (A) the amount and percentage of such institution's
11 revenues received from sources under this title; and

12 (B) the amount and percentage of such institution's
13 revenues received from other sources.

14
15

1 **Issue Paper #10**

2 **Origin:** HEOA

3 **Issue:** Consumer Information

4 **Statutory cites:** Section 485(a) of the HEA

5 **Regulatory cites:** 668.43(c)

6 **DCL GEN-08-12 cite:** Pages 95-96

7 **Summary of issue:** The HEOA expands the list of information that
8 institutions are required to make available to prospective and
9 enrolled students. In addition to the requirements listed in
10 §485(a) of the HEA, institutions must now also include
11 information on:

- 12 • The placement of and types of employment obtained by
13 graduates of the institutions' degree or certificate programs;
- 14 • The types of graduate and professional education in which
15 graduates of the institutions' four-year degree programs
16 enrolled; and
- 17 • The retention rates of certificate or degree seeking first-
18 time full-time undergraduate students entering the
19 institution.

20 The HEOA provides that the information in the first two
21 bullets may be gathered from sources such as alumni surveys,
22 student satisfaction surveys, the National Survey of Student
23 Engagement, the Community College Survey of Student Engagement,
24 State data systems, or other relevant sources.

25 The HEOA amends subparagraph (L) of section 485(a)(1) of
26 the HEA regarding completion and graduation rates disclosed to
27 exclude the completion or graduation rates of students who leave
28 school to serve in the Armed Forces, on official church

1 missions, or with a recognized foreign aid service of the
2 Federal Government. In cases where these types of students
3 represent 20 percent or more of the certificate or degree-
4 seeking full-time undergraduate students at the institution, the
5 institution may recalculate the completion or graduate rates of
6 such students by excluding from the calculation the time period
7 such students weren't enrolled due to their service in those
8 categories. The same exclusions from reporting requirements are
9 also reflected in amended section 485(e) of the HEA with respect
10 to the disclosure of athletically related graduation rates.

11 The HEOA now also requires institutions to disaggregate
12 completion and graduation rate data with respect to (1) existing
13 section 485(a)(1)(L) of the HEA, which requires institutions to
14 disclose the completion and graduation rate of certificate- or
15 degree-seeking, full-time, undergraduate students; and (2)
16 existing section 485(e) of the HEA, which requires institutions
17 to disclose and submit annually to the Department completion or
18 graduation rates for student-athletes. The data must be
19 disaggregated based on gender, race/ethnicity and receipt of a
20 Federal Pell Grant, receipt of a FFEL or Direct Loan (but not an
21 unsubsidized Stafford or Federal Direct Unsubsidized Stafford)
22 but not a Federal Pell Grant, and non- receipt of a Federal Pell
23 Grant or Federal loans (other than an unsubsidized Stafford or
24 Federal Direct Unsubsidized Stafford). The HEOA provides an
25 exception where institutions may note instances where the
26 statistical number is too small and would not yield
27 statistically reliable information or would reveal personally
28 identifiable information. These requirements will not apply to
29 two-year degree-granting institutions until the 2011-2012
30 academic year.

31

1 **Updated information since 4/16:**

2 We have 1) dropped the words "on request" when describing
3 general disclosure information that institutions must make
4 available, 2) described the institution's placement data as
5 "information" instead of a "rate," and 3) dropped the reference
6 to the National Survey of Student Engagement and the Community
7 College Survey of Student Engagement as sources for data for
8 placement in employment, and enrollment in graduate and
9 professional education in 668.41 (d). With respect to the
10 disaggregation of an institution's completion and graduation
11 rate in 668.45, we have 1) clarified that a number of students
12 who receive certain types of aid is insufficient to yield
13 statistically reliable information if it is too small to be
14 meaningful, and 2) specified that, in determining whether a
15 student has received such aid, the institution will consider
16 only whether the student has received the aid during the first
17 year. And, in addressing the waiver for institutions that
18 belong to an athletic association or conference that provides
19 graduation and completion rate data, we have clarified that the
20 waiver is only for the graduation and completion rate data.

21 **Tentative agreement:**

22 **Regulatory language:**

23 §668.41 Reporting and disclosure of information.

24 * * *

25 (d) General disclosures for enrolled or prospective
26 students. An institution must make available to any enrolled
27 student or prospective student, ~~on request,~~ through appropriate
28 publications, mailings or electronic media, information
29 concerning—

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

3 (2) The institution (pursuant to §668.43);

4 (3) The institution's retention rate (pursuant to §668.45).
5 In the case of a request from a prospective student, the
6 information must be made available prior to the student's
7 enrolling or entering into any financial obligation with the
8 institution;

9 (4) The institution's completion or graduation rate and, if
10 applicable, its transfer-out rate (pursuant to §668.45). In the
11 case of a request from a prospective student, the information
12 must be made available prior to the student's enrolling or
13 entering into any financial obligation with the institution;

14 (5) The institution's placement ~~rate information~~. The
15 placement of, and types of employment obtained by, graduates of
16 the institution's degree or certificate programs. This
17 information may be gathered from alumni surveys, student
18 satisfaction surveys, ~~the National Survey of Student Engagement,~~
19 ~~the Community College Survey of Student Engagement,~~ State data
20 systems, or other relevant sources, ~~however the institution must~~
21 ~~disclose the source of the information;~~ and

22 (6) The types of graduate and professional education in
23 which graduates of the institution's four-year degree programs
24 enroll. This information may be gathered from alumni surveys,
25 student satisfaction surveys, ~~the National Survey of Student~~
26 ~~Engagement, State data systems,~~ or other relevant sources,
27 ~~however the institution must disclose the source of the~~
28 ~~information.~~

29 * * *

1 (g) *Enrolled students, prospective students, and the*
2 *public—report on athletic program participation rates and*
3 *financial support data.* (1)(i) An institution of higher
4 education subject to §668.47 must, not later than October 15 of
5 each year, make available ~~on request~~ to enrolled students,
6 prospective students, and the public, the report produced
7 pursuant to §668.47(c). The institution must make the report
8 easily accessible to students, prospective students, and the
9 public and must provide the report promptly to anyone who
10 requests it.

11 (ii) The institution must provide notice to all enrolled
12 students, pursuant to paragraph (c)(1) of this section, and
13 prospective students of their right to request the report
14 described in paragraph (g)(1) of this section. If the
15 institution chooses to make the report available by posting the
16 disclosure on an Internet website or an Intranet website, it
17 must provide in the notice the exact electronic address at which
18 the report is posted, a brief description of the report, and a
19 statement that the institution will provide a paper copy of the
20 report on request. For prospective students, the institution may
21 not use an Intranet website for this purpose.

22 (2) An institution must submit the report described in
23 paragraph (g)(1)(i) of this section to the Secretary within 15
24 days of making it available to students, prospective students,
25 and the public.

26 * * * * *

27 § 668.43 Institutional information.

28 (a) Institutional information that the institution must
29 make readily available ~~upon request~~ to enrolled and prospective
30 students under this subpart includes, but is not limited to—

1 (1) The cost of attending the institution, including—
2 (i) Tuition and fees charged to full-time and part-time
3 students;
4 (ii) Estimates of costs for necessary books and supplies;
5 (iii) Estimates of typical charges for room and board;
6 (iv) Estimates of transportation costs for students; and
7 (v) Any additional cost of a program in which a student is
8 enrolled or expresses a specific interest;
9 (2) Any refund policy with which the institution is
10 required to comply for the return of unearned tuition and fees
11 or other refundable portions of costs paid to the institution;
12 (3) The requirements and procedures for officially
13 withdrawing from the institution;
14 (4) A summary of the requirements under §668.22 for the
15 return of title IV grant or loan assistance;
16 (5) The academic program of the institution, including—
17 (i) The current degree programs and other educational and
18 training programs;
19 (ii) The instructional, laboratory, and other physical
20 facilities which relate to the academic program; and
21 (iii) The institution's faculty and other instructional
22 personnel;
23 (6) The names of associations, agencies or governmental
24 bodies that accredit, approve, or license the institution and
25 its programs and the procedures by which documents describing
26 that activity may be reviewed under paragraph (b) of this
27 section;

1 (7) A description of any special facilities and services
2 available to disabled students;

3 (8) The titles of persons designated under §668.44 and
4 information regarding how and where those persons may be
5 contacted; and

6 (9) A statement that a student's enrollment in a program of
7 study abroad approved for credit by the home institution may be
8 considered enrollment at the home institution for the purpose of
9 applying for assistance under the title IV, HEA programs.

10 (b) The institution must make available for review to any
11 enrolled or prospective student, ~~upon request,~~ a copy of the
12 documents describing the institution's accreditation, approval
13 or licensing.

14 §668.45 Information on completion or graduation rates, transfer
15 rates, and retention rates.

16 (a) (1) An institution annually must prepare the completion
17 or graduation rate of its certificate- or degree-seeking, first-
18 time, full-time undergraduate students, as provided in paragraph
19 (b) of this section, and the retention rate of its certificate
20 or degree seeking, first-time, full-time undergraduate students
21 as provided in paragraph (d).

22 (2) An institution that determines that its mission
23 includes providing substantial preparation for students to
24 enroll in another eligible institution must prepare the
25 transfer-out rate of its certificate- or degree-seeking, first-
26 time, full-time undergraduate students, as provided in paragraph
27 (c) of this section.

28 (3) (i) An institution that offers a predominant number of
29 its programs based on semesters, trimesters, or quarters must
30 base its completion or graduation rate, retention rate, and, if

1 applicable, transfer-out rate on the cohort of first-time,
2 certificate- or degree-seeking, full-time undergraduate students
3 who enter the institution during the fall term of each year.

4 (ii) An institution not covered by the provisions of
5 paragraph (a) (3) (i) of this section must base its completion or
6 graduation rate, retention rate, and, if applicable, transfer-
7 out rate -on the cohort of first-time, certificate- or degree-
8 seeking, full-time undergraduate students who enter the
9 institution between September 1 of one year and August 31 of the
10 following year.

11 (4) (i) An institution covered by the provisions of
12 paragraph (a) (3) (i) of this section must count as an entering
13 student a first-time undergraduate student who is enrolled as of
14 October 15, the end of the institution's drop-add period, or
15 another official reporting date as defined in §668.41(a).

16 (ii) An institution covered by paragraph (a) (3) (ii) of this
17 section must count as an entering student a first-time
18 undergraduate student who is enrolled for at least-

19 (A) 15 days, in a program of up to, and including, one year
20 in length; or

21 (B) 30 days, in a program of greater than one year in
22 length.

23 (5) An institution must make available its completion or
24 graduation rate, retention rate, and, if applicable, transfer-
25 out rate, no later than the July 1 immediately following the 12-
26 month period ending August 31 during which 150% of the normal
27 time for completion or graduation has elapsed for all of the
28 students in the group on which the institution bases its
29 completion or graduation rate, retention rate, and, if
30 applicable, transfer-out rate.

1 (6) (i) Completion or graduation rate information must be
2 disaggregated by gender, by each major racial and ethnic
3 subgroup, by recipients of a Federal Pell Grant, by recipients
4 of a Federal Family Education Loan or a Federal Direct Loan
5 (other than an Unsubsidized Stafford Loan made under the Federal
6 Family Education Loan Program or a Federal Direct Unsubsidized
7 Stafford Loan) who did not receive a Federal Pell Grant, and by
8 recipients of neither a Federal Pell Grant nor a Federal Family
9 Education Loan or a Federal Direct Loan (other than an
10 Unsubsidized Stafford Loan made under the Federal Family
11 Education Loan Program or a Federal Direct Unsubsidized Stafford
12 Loan) if the number of students in such group or with such status
13 is sufficient to yield statistically reliable information and
14 reporting will not reveal personally identifiable information
15 about an individual student. If such number is not sufficient
16 for such purpose, **i.e., is too small to be meaningful,** then the
17 institution shall note that the institution enrolled too few of
18 such students to so disclose or report with confidence and
19 confidentiality.

20 (ii) With respect to the requirement in (6) (i) of this
21 paragraph to disaggregate the completion or graduation rate
22 information by the receipt or non receipt of Federal student
23 aid, students shall be considered to have received the aid in
24 question only if they received such aid in the first year of
25 their enrollment in their program.

26 (iii) The requirement in (6) (i) of this paragraph shall not
27 apply to two-year, degree-granting institutions of higher
28 education until academic year 2011-2012.

29 (b) In calculating the completion or graduation rate under
30 paragraph (a) (1) of this section, an institution must count as
31 completed or graduated-

1 (1) Students who have completed or graduated by the end of
2 the 12-month period ending August 31 during which 150% of the
3 normal time for completion or graduation from their program has
4 lapsed; and

5 (2) Students who have completed a program described in
6 §668.8(b)(1)(ii), or an equivalent program, by the end of the
7 12-month period ending August 31 during which 150% of normal
8 time for completion from that program has lapsed.

9 (c) In calculating the transfer-out rate under paragraph
10 (a)(2) of this section, an institution must count as transfers-
11 out students who, by the end of the 12-month period ending
12 August 31 during which 150% of the normal time for completion or
13 graduation from the program in which they were enrolled has
14 lapsed, have not completed or graduated but have subsequently
15 enrolled in any program of an eligible institution for which its
16 program provided substantial preparation.

17 (d) In calculating the retention rate under paragraph
18 (a)(1) of this section, except as noted in paragraph (e) of this
19 section, an institution must use the definition of a retention
20 rate used by the Integrated Postsecondary Education Data System
21 (IPEDS), which indicates that the retention rate is "a measure
22 of the rate at which students persist in their educational
23 program at an institution, expressed as a percentage." For
24 four-year institutions, this is the percentage of first-time
25 bachelors (or equivalent) degree-seeking undergraduates from the
26 previous fall who are again enrolled in the current fall. For
27 all other institutions this is the percentage of first-time
28 degree/certificate-seeking students from the previous fall who
29 either re-enrolled or successfully completed their program by
30 the current fall.

1 (e) For the purpose of calculating a completion or
2 graduation rate, a transfer-out rate, and a retention rate, an
3 institution may

4 (1) Exclude students who --

5 (i) Have left school to serve in the Armed Forces;

6 (ii) Have left school to serve on official church missions;

7 (iii) Have left school to serve with a foreign aid service
8 of the Federal Government, such as the Peace Corps;

9 (iv) Are totally and permanently disabled; or

10 (v) Are deceased; or

11 (2) In cases where the students described in paragraphs
12 (e)(1)(i) through (iv) of this paragraph represent 20 percent or
13 more of the certificate- or degree-seeking, full-time,
14 undergraduate students at the institution, recalculate the
15 completion or graduation rates of those students by adding to
16 the 150% time-frame they normally have to complete or graduate,
17 as described in paragraph (b) of this section, the time period
18 the students were not enrolled due to their service in the Armed
19 Forces, on official church missions, or with a recognized
20 foreign aid service of the Federal Government.

21 (f)(1) The Secretary grants a waiver of the requirements of
22 this section **dealing with completion and graduation rate data** to
23 any institution that is a member of an athletic association or
24 conference that has voluntarily published completion or
25 graduation rate data, or has agreed to publish data, that the
26 Secretary determines are substantially comparable to the
27 completion or graduation rate data required by this section.

1 (2) An institution that receives a waiver of the
2 requirements of this section must still comply with the
3 requirements of §668.41(d)(3) and (f).

4 (3) An institution, or athletic association or conference
5 applying on behalf of an institution, that seeks a waiver under
6 paragraph (f)(1) of this section must submit a written
7 application to the Secretary that explains why it believes the
8 data the athletic association or conference publishes are
9 accurate and substantially comparable to the information
10 required by this section.

11 (g) In addition to calculating the completion or graduation
12 rate and the retention rate required by paragraph (a)(1) of this
13 section, an institution may, but is not required to—

14 (1) Calculate a completion or graduation rate for students
15 who transfer into the institution;

16 (2) Calculate a completion or graduation rate,, , and a
17 retention rate for students described in paragraphs (e)(1)
18 through (4) of this section; and

19 (3) Calculate a transfer-out rate as specified in paragraph
20 (c) of this section, if the institution determines that its
21 mission does not include providing substantial preparation for
22 its students to enroll in another eligible institution.

23 **§668.48 Report on completion or graduation rates for student-**
24 **athletes.**

25 * * *

26 (b) The provisions of §668.45 (a), (b), (c), and (e) apply
27 for purposes of calculating the completion or graduation rates
28 and, if applicable, transfer-out rates required under paragraphs
29 (a)(1)(iii) through (vi) of this section.

1 * * * * *

2 **Statutory Language:**

3 SEC. 485 INSTITUTIONAL AND FINANCIAL ASSISTANCE INFORMATION FOR
4 STUDENTS.

5 (a) INFORMATION DISSEMINATION ACTIVITIES.—

6 (1) Each eligible institution participating in any program
7 under this title shall carry out information dissemination
8 activities for prospective and enrolled students (including
9 those attending or planning to attend less than full time)
10 regarding the institution and all financial assistance under
11 this title. The information required by this section shall be
12 produced and be made readily available upon request, through
13 appropriate publications, mailings, and electronic media, to an
14 enrolled student and to any prospective student. Each eligible
15 institution shall, on an annual basis, provide to all enrolled
16 students a list of the information that is required to be
17 provided by institutions to students by this section and section
18 444 of the General Education Provisions Act (also referred to as
19 the Family Educational Rights and Privacy Act of 1974), together
20 with a statement of the procedures required to obtain such
21 information. The information required by this section shall
22 accurately describe—

23 * * * * *

24 (R) the placement in employment of, and types of employment
25 obtained by, graduates of the institution's degree or
26 certificate programs, gathered from such sources as alumni
27 surveys, student satisfaction surveys, the National Survey of
28 Student Engagement, the Community College Survey of Student
29 Engagement, State data systems, or other relevant sources;

1 (S) the types of graduate and professional education in
2 which graduates of the institution's four-year degree programs
3 enrolled, gathered from such sources as alumni surveys, student
4 satisfaction surveys, the National Survey of Student Engagement,
5 State data systems, or other relevant sources;

6 * * * * *

7 (U) the retention rate of certificate- or degree-seeking,
8 first-time, full-time, undergraduate students entering such
9 institution; and

10 * * * * *

11 (3) In calculating the completion or graduation rate under
12 subparagraph (L) of paragraph (1) of this subsection or under
13 subsection (e), a student shall be counted as a completion or
14 graduation if, within 150 percent of the normal time for
15 completion of or graduation from the program, the student has
16 completed or graduated from the program, or enrolled in any
17 program of an eligible institution for which the prior program
18 provides substantial preparation. The information required to be
19 disclosed under such subparagraph—

20 **(A)** shall be made available by July 1 each year to enrolled
21 students and prospective students prior to the students
22 enrolling or entering into any financial obligation; and

23 **(B)** shall cover the one-year period ending on August 31 of
24 the preceding year.

25 ~~(4) For purposes of this section, institutions may exclude~~
26 ~~from the information disclosed in accordance with subparagraph~~
27 ~~(L) of paragraph (1) the completion or graduation rates of~~
28 ~~students who leave school to serve in the armed services, on~~
29 ~~official church missions, or with a recognized foreign aid~~
30 ~~service of the Federal Government.~~

1 (4) For purposes of this section, institutions may—

2 (A) exclude from the information disclosed in accordance
3 with subparagraph (L) of paragraph (1) the completion or
4 graduation rates of students who leave school to serve in the
5 Armed Forces, on official church missions, or with a recognized
6 foreign aid service of the Federal Government; or

7 (B) in cases where the students described in subparagraph
8 (A) represent 20 percent or more of the certificate- or degree-
9 seeking, full-time, undergraduate students at the institution,
10 recalculate the completion or graduation rates of such students
11 by excluding from the calculation described in paragraph (3) the
12 time period such students were not enrolled due to their service
13 in the Armed Forces, on official church missions, or with a
14 recognized foreign aid service of the Federal Government.

15 (5) The Secretary shall permit any institution of higher
16 education that is a member of an athletic association or
17 athletic conference that has voluntarily published completion or
18 graduation rate data or has agreed to publish data that, in the
19 opinion of the Secretary, is substantially comparable to the
20 information required under this subsection, to use such data to
21 satisfy the requirements of this subsection; and

22 (6) Each institution may provide supplemental information
23 to enrolled and prospective students showing the completion or
24 graduation rate for students described in paragraph (4) or for
25 students transferring into the institution or information
26 showing the rate at which students transfer out of the
27 institution.

28 (7) (A) (i) Subject to clause (ii), the information
29 disseminated under paragraph (1) (L), or reported under
30 subsection (e), shall be disaggregated by gender, by each major

1 racial and ethnic subgroup, by recipients of a Federal Pell
2 Grant, by recipients of a loan made under part B or D (other
3 than a loan made under section 428H or a Federal Direct
4 Unsubsidized Stafford Loan) who did not receive a Federal Pell
5 Grant, and by recipients of neither a Federal Pell Grant nor a
6 loan made under part B or D (other than a loan made under
7 section 428H or a Federal Direct Unsubsidized Stafford Loan), if
8 the number of students in such subgroup or with such status is
9 sufficient to yield statistically reliable information and
10 reporting will not reveal personally identifiable information
11 about an individual student. If such number is not sufficient
12 for such purposes, then the institution shall note that the
13 institution enrolled too few of such students to so disclose or
14 report with confidence and confidentiality.

15 (ii) The requirements of clause (i) shall not apply to two-
16 year, degree-granting institutions of higher education until
17 academic year 2011-2012.

18
19

1 **Issue Paper # 11**

2 **Origin:** HEOA

3 **Issue:** Disclosure of Fire Safety Standards and Measures

4 **Statutory cites:** Section 485(i) of the HEA

5 **Regulatory cites:** §668.41 and §668.49

6 **DCL GEN-08-12 cite:** Pages 99-100

7 **Summary of issue:** The HEOA requires that all Title IV eligible
8 institutions that participate in any Title IV program and that
9 maintain on-campus student housing facilities publish an annual
10 fire safety report, maintain a fire log, and report fire
11 statistics to the Secretary.

12 **Updated Information since 4/14-16 meetings:** We have clarified in
13 §668.41(e)(1) that only institutions with an on-campus student
14 housing facility are required to distribute an annual fire
15 safety report. We moved a paragraph describing how an
16 institution may publish its annual fire safety report
17 independently of its annual security report from §668.49 to
18 §668.41. We clarified that publication of the annual fire
19 safety report must begin by October 1, 2010 in §668.49(b). This
20 date mirrors that of the annual security report. Finally, we
21 clarified that the policies for fire safety education should
22 include educating students and employees about the procedures to
23 report a fire in §668.49(b)(6).

24
25 **Regulatory language:**

26 §668.41 Reporting and disclosure of information.

27 * * * * *

28 (e) Annual security report and annual fire safety report -

1 (1) *Enrolled students and current employees - annual*
2 *security report and annual fire safety report*. By October 1 of
3 each year, an institution must distribute **r** to all enrolled
4 students and current employees **r**, its annual security report
5 described in §668.46(b), **and, if the institution maintains an**
6 **on-campus student housing facility,** *its annual fire safety*
7 *report described in §668.49(b)*, through appropriate publications
8 and mailings, including--

9 (2) Enrolled students - annual security report and annual
10 fire safety report. If an institution chooses to distribute
11 either its annual security report or annual fire safety report
12 to enrolled students by posting the disclosure **or disclosures** on
13 an Internet **Web site** or an Intranet **Web site**, the institution
14 must comply with the requirements of paragraph (c) (2) of this
15 section.

16 (3) Current employees - annual security report and annual
17 fire safety report. If an institution chooses to distribute
18 **either** its annual security report **or its annual fire safety**
19 **report** to current employees by posting the disclosure or
20 disclosures on an Internet **Web site** or an Intranet **Web site**, the
21 institution must, by October 1 of each year, distribute to all
22 current employees a notice that includes a statement of the
23 report's availability, the exact electronic address at which the
24 report is posted, a brief description of the report's contents,
25 and a statement that the institution will provide a paper copy
26 of the report upon request.

27 (4) *Prospective students and prospective employees - annual*
28 *security report and annual fire safety report*. For each of the
29 reports, ~~t~~The institution must provide a notice to prospective
30 students and prospective employees that includes a statement of
31 the report's availability, a description of its contents, and an

1 opportunity to request a copy. An institution must provide its
2 annual security report ~~or its~~ and annual fire safety report,
3 upon request, to a prospective student or prospective employee.
4 If the institution chooses to provide either its annual security
5 report ~~or its~~ annual fire safety report to prospective students
6 and prospective employees by posting the disclosure on an
7 Internet Web site, the notice described in this paragraph must
8 include the exact electronic address at which the report is
9 posted, a brief description of the report, and a statement that
10 the institution will provide a paper copy of the report upon
11 request.

12 (5) *Submission to the Secretary - annual security report*
13 and annual fire safety report. Each year, by the date and in a
14 form specified by the Secretary, an institution must submit the
15 statistics required by §668.46(c) and §668.49(c) to the
16 Secretary.

17 (6) Publication of the annual fire safety report. —In
18 complying with section 668.41(e), aAn institution may publish
19 its annual fire safety report concurrently with its annual
20 security report only if the title of the report clearly states
21 that the report contains both the annual security report and the
22 annual fire safety report. If an institution chooses to publish
23 the annual fire safety report separately from the annual
24 security report, it must include information in each of the two
25 reports about how to directly access the other report.

26 * * * * *

27 §668.49 Institutional fire safety policies and fire statistics.

28 (a) Additional definitions that apply to this section.

1 Cause of fire: The cause of ignition of a fire, as defined
2 in the National Fire Incident Reporting System Complete
3 Reference Guide.

4 Cause of fire: The factor or factors that give rise to a
5 fire. The causal factor may be, but is not limited to, the
6 result of an intentional or unintentional action, mechanical
7 failure, or act of nature.

8 Fire: Any instance of open flame or other burning in a
9 place ~~or manner~~ not intended to contain the burning.

10 Fire drill: A supervised practice of a mandatory evacuation
11 of a building for a fire.

12 Fire-related injury: Any instance in which a person is
13 injured as a result of a fire, including ~~an injuries~~ ~~sustained~~
14 from ~~a~~ natural or accidental causes, ~~sustained~~ while involved in
15 ~~the activities of~~ fire control, attempting rescue, or escaping
16 from the dangers of the fire. ~~This~~ ~~is~~ ~~term~~ ~~person~~ may include
17 students, faculty, staff, visitors, firefighters, or any other
18 ~~persons injured as a result of a fire~~ individuals.

19 Fire-related death: Any instance in which a person ~~is~~

20 (1) ~~Is~~ killed as a result of a fire, including deaths
21 resulting from ~~a~~ natural or accidental causes ~~sustained~~ while
22 involved in ~~the activities of~~ fire control, attempting rescue,
23 or escaping from the dangers of a fire; or

24 (2) ~~Deaths also include people who die~~ Dies within ~~one~~ year
25 of injuries sustained as a result of the fire.

26 Fire safety system: Any mechanism or system related to the
27 detection of a fire, the warning resulting from a fire, or the
28 control of a fire. This ~~may include~~ ~~system includes~~ sprinkler
29 systems ~~or other fire extinguishing systems~~, fire detection

1 devices, stand-alone smoke alarms, devices that alert one to the
2 presence of a fire, such as horns, bells, or strobe lights;
3 smoke-control and reduction mechanisms; and fire doors and walls
4 that reduce the spread of a fire.

5 Value of Property Damage: The estimated value of the loss
6 of the structure and contents, in terms of the cost of
7 replacement in like kind and quantity. This estimate should
8 include contents damaged by fire, and related damages caused by
9 smoke, water, and overhaul; however, it does not include
10 indirect loss, such as business interruption.

11 (b) Annual fire safety report. Beginning by October 1,
12 2010, aAn institution that maintains any on-campus student
13 housing facility must prepare an annual fire safety report that
14 contains, at a minimum, the following information:

15 (1) The fire statistics described in paragraph (c) of this
16 section.

17 (2) A description of each on-campus student housing
18 facility fire safety system. and sprinkler system. including the
19 type, age, design, area covered, activation sensitivity, and
20 other pertinent information;

21 (3) The number of fire drills held during the previous
22 calendar year.

23 (4) The institution's policies or rules on portable
24 electrical appliances, smoking, and open flames in a student
25 housing facility.

26 (5) The institution's procedures for student housing
27 evacuation in the case of a fire.

28 (6) For purposes of including a fire in the statistics in
29 the annual fire safety report, a list of the titles of each

~~1 person or organization to which students and employees reported
2 that a fire occurred.~~

~~3 (67) The policies regarding fire safety education and
4 training programs provided to the students, faculty, and staff.
5 In these policies, the institution must describe the procedures
6 that students and employees should follow in the case of a fire,
7 including the titles of the persons to whom they should report
8 that a fire occurred.~~

~~9 (78) Plans for future improvements in fire safety, if
10 determined necessary by the institution.~~

~~11 (c) Fire statistics. (1) An institution must report
12 statistics for each on-campus student housing facility, for the
13 three most recent calendar years for which data are available,
14 concerning-~~

~~15 (i) The number of fires and the cause of each fire;~~

~~16 (ii) The number of injuries related to a fire that resulted
17 in treatment at a medical facility, including at an on-campus
18 health center;~~

~~19 (iii) The number of deaths related to a fire; and~~

~~20 (iv) The value of property damage caused by a fire.~~

~~21 (2) An institution is required to submit a copy of the
22 fire statistics in paragraph (c) (1) of this section to the
23 Secretary on an annual basis.~~

~~24 (d) Publication of the annual fire safety report. (1) An
25 institution must publish and distribute its annual fire safety
26 report in accordance with paragraph (e) of this section.~~

~~27 (2) An institution may publish its annual fire safety
28 report concurrently with its annual security report only if the
29 title of the report clearly states that the report contains both~~

1 ~~the annual security report and the annual fire safety report.~~
2 ~~If an institution chooses to publish the annual fire safety~~
3 ~~report separately from the annual security report, it must~~
4 ~~include information in each of the two reports about where or~~
5 ~~how to directly access the other.~~ (Moved to 668.41(e))

6 (ed) Fire log. (1) An institution that maintains on-campus
7 student housing facilities must maintain a written, easily
8 understood fire log that records, by the date that the fire was
9 reported, any fire that occurred in an on-campus student housing
10 facility. This log must include the nature, date, time and
11 general location of each fire.

12 (2) An institution must make an entry or an addition to an
13 entry to the log within two business days, as defined under
14 §668.46(a), of the receipt of the information. ~~of the report of~~
15 ~~the information to the campus fire department.~~

16 (3) An institution must make the fire log for the most
17 recent 60-day period open to public inspection during normal
18 business hours. The institution must make any portion of the
19 log older than 60 days available within two business days of a
20 request for public inspection.

21 (4) An institution must make an annual report to the campus
22 community on the fires recorded in the fire log. This report
23 requirement may be included in satisfied by the annual fire
24 safety report described in paragraph (b) of this section.

25 **Statutory Language:**

26 (i) DISCLOSURE OF FIRE SAFETY STANDARDS AND MEASURES.—

27 (1) ANNUAL FIRE SAFETY REPORTS ON STUDENT HOUSING
28 REQUIRED.—Each eligible institution participating in any program
29 under this title that maintains on-campus student housing
30 facilities shall, on an annual basis, publish a fire safety

1 report, which shall contain information with respect to the
2 campus fire safety practices and standards of that institution,
3 including—

4 (A) statistics concerning the following in each on-campus
5 student housing facility during the most recent calendar years
6 for which data are available:

7 (i) the number of fires and the cause of each fire;

8 (ii) the number of injuries related to a fire that result
9 in treatment at a medical facility;

10 (iii) the number of deaths related to a fire; and

11 (iv) the value of property damage caused by a fire;

12 (B) a description of each on-campus student housing
13 facility fire safety system, including the fire sprinkler
14 system;

15 (C) the number of regular mandatory supervised fire drills;

16 (D) policies or rules on portable electrical appliances,
17 smoking, and open flames (such as candles), procedures for
18 evacuation, and policies regarding fire safety education and
19 training programs provided to students, faculty, and staff; and

20 (E) plans for future improvements in fire safety, if
21 determined necessary by such institution.

22 (2) REPORT TO THE SECRETARY.—Each eligible institution
23 participating in any program under this title shall, on an
24 annual basis, submit to the Secretary a copy of the statistics
25 required to be made available under paragraph (1) (A).

26 (3) CURRENT INFORMATION TO CAMPUS COMMUNITY.—Each eligible
27 institution participating in any program under this title shall—

1 (A) make, keep, and maintain a log, recording all fires in
2 on-campus student housing facilities, including the nature,
3 date, time, and general location of each fire; and

4 (B) make annual reports to the campus community on such
5 fires.

6 (4) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall—

7 (A) make the statistics submitted under paragraph (1)(A) to
8 the Secretary available to the public; and

9 (B) in coordination with nationally recognized fire
10 organizations and representatives of institutions of higher
11 education, representatives of associations of institutions of
12 higher education, and other organizations that represent and
13 house a significant number of students—

14 (i) identify exemplary fire safety policies, procedures,
15 programs, and practices, including the installation, to the
16 technical standards of the National Fire Protection Association,
17 of fire detection, prevention, and protection technologies in
18 student housing, dormitories, and other buildings;

19 (ii) disseminate the exemplary policies, procedures,
20 programs and practices described in clause (i) to the
21 Administrator of the United States Fire Administration;

22 (iii) make available to the public information concerning
23 those policies, procedures, programs, and practices that have
24 proven effective in the reduction of fires; and

25 (iv) develop a protocol for institutions to review the
26 status of their fire safety systems.

27 (5) RULES OF CONSTRUCTION.—Nothing in this subsection shall
28 be construed to—

1 (A) authorize the Secretary to require particular policies,
2 procedures, programs, or practices by institutions of higher
3 education with respect to fire safety, other than with respect
4 to the collection, reporting, and dissemination of information
5 required by this subsection;

6 (B) affect section 444 of the General Education Provisions
7 Act (the Family Educational Rights and Privacy Act of 1974) or
8 the regulations issued under section 264 of the Health Insurance
9 Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2
10 note);

11 (C) create a cause of action against any institution of
12 higher education or any employee of such an institution for any
13 civil liability; or

14 (D) establish any standard of care.

15 (6) COMPLIANCE REPORT.—The Secretary shall annually report
16 to the authorizing committees regarding compliance with this
17 subsection by institutions of higher education, including an up-
18 to-date report on the Secretary's monitoring of such compliance.

19 (7) EVIDENCE.—Notwithstanding any other provision of law,
20 evidence regarding compliance or noncompliance with this
21 subsection shall not be admissible as evidence in any proceeding
22 of any court, agency, board, or other entity, except with
23 respect to an action to enforce this subsection.

24

1 **Issue Paper #12**

2
3 **Origin:** HEOA

4 **Issue:** Missing Person Procedures

5 **Statutory cites:** Section 485(j) of the HEA

6 **Regulatory cites:** §668.41, §668.46(b)(14) and §668.46(h)

7 **DCL GEN-08-12 cite:** Pages 100-101

8 **Summary of issue:** The HEOA requires Title IV eligible
9 institutions that provide on-campus housing to establish, for
10 students who reside in on-campus student housing, both a missing
11 student notification policy that allows students to
12 confidentially register a contact person and missing student
13 notification procedures.

14 **Updated information since 4/14-16 meeting:** We clarified that the
15 term an on-campus student housing facility is located on campus,
16 as defined in 668.46(a). We also added language clarifying that
17 only authorized campus officials may access students'
18 confidential missing student contact information in
19 §668.46(h)(1)(iv).

20 **Regulatory Language:**

21 §668.41 Reporting and disclosure of information.

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

24 * * *

25 On-Campus Student Housing Facility: A dormitory or other
26 residential facility for students that is located on an
27 institution's campus, as defined in 668.46(a).

28 * * * * *

1 §668.46 Institutional security policies and crime statistics.

2 (a) Additional definitions that apply to this section.

3 * * *

4 Test: Regularly scheduled drills, exercises, and
5 appropriate follow-through activities, designed for assessment
6 and evaluation of emergency plans and capabilities.

7 * * *

8 (b) Annual security report. An institution must prepare
9 an annual security report that contains, at a minimum, the
10 following information:

11 * * *

12 (13) Beginning with the annual security report distributed
13 by October 1, 2010, a statement of policy regarding emergency
14 response and evacuation procedures, as described in paragraph
15 (g) of this section; and

16 (14) Beginning with the annual security report distributed
17 by October 1, 2010, a statement of policy regarding missing
18 person student notification procedures, as described in
19 paragraph (h) of this section.

20 * * * * *

21 (h) Missing person student notification policies and
22 procedures.

23 (1) An institution that provides any on-campus student
24 housing facility must include a statement of policy regarding
25 missing student notification procedures in its annual security
26 report. This statement must --

27 (i) Indicate a list of titles of the persons or
28 organizations to which students and employees students,

1 employees, or other individuals should report that a student has
2 been missing for 24 hours;

3 (ii) Require that any official missing person student
4 report must be referred immediately to the institution's police
5 or campus security department, or, in the absence of a sworn law
6 enforcement officer, an institutional police or campus security
7 department, to the local law enforcement agency that has
8 jurisdiction in the area;

9 (iii) Contain an option for each student living in an on-
10 campus student housing facility to identify a contact person or
11 persons whom the institution shall notify if the student is
12 determined missing by the campus security or police department,
13 institutional police or campus security department, or the local
14 law enforcement agency;

15 (iv) Advise students that their contact information will be
16 registered confidentially, and that this information will be
17 accessible only to authorized campus officials;

18 (v) Advise students that if they are under 18 years of age
19 and not emancipated, the institution must notify a custodial
20 parent or guardian when the student is missing, in addition to
21 any additional contact person designated by the student; and

22 (vi) Advise students that, regardless of whether they name
23 a contact person, unless the local law enforcement agency was
24 the entity that made the determination that a student is
25 missing, the institution will notify the local law enforcement
26 agency that the student is missing.

27 (2) The procedures that the institution must will follow
28 when a student who resides in an on-campus student housing
29 facility is determined to have been missing for 24 hours include

30 --

1 (i) If the student has designated a contact person, the
2 institution will notify notifying that contact person within 24
3 hours;

4 (ii) If the student is under 18 years of age and is not
5 emancipated, the institution will notify notifying the student's
6 custodial parent or guardian and any other designated contact
7 person within 24 hours; and

8 (iii) Regardless of whether the student has identified a contact
9 person, is above the age of 18, or is an emancipated minor, the
10 institution will inform informing the local law enforcement
11 agency that has jurisdiction in the area that the student is
12 missing within 24 hours.

13 **Statutory Language:**

14 (j) MISSING PERSON PROCEDURES.—

15 (1) OPTION AND PROCEDURES.—Each institution of higher
16 education that provides on-campus housing and participates in
17 any program under this title shall—

18 (A) establish a missing student notification policy for
19 students who reside in on-campus housing that—

20 (i) informs each such student that such student has the
21 option to identify an individual to be contacted by the
22 institution not later than 24 hours after the time that the
23 student is determined missing in accordance with official
24 notification procedures established by the institution under
25 subparagraph (B);

26 (ii) provides each such student a means to register
27 confidential contact information in the event that the student
28 is determined to be missing for a period of more than 24 hours;

1 (iii) advises each such student who is under 18 years of
2 age, and not an emancipated individual, that the institution is
3 required to notify a custodial parent or guardian not later 24
4 hours after the time that the student is determined to be
5 missing in accordance with such procedures;

6 (iv) informs each such residing student that the
7 institution will notify the appropriate law enforcement agency
8 not later than 24 hours after the time that the student is
9 determined missing in accordance with such procedures; and

10 (v) requires, if the campus security or law enforcement
11 personnel has been notified and makes a determination that a
12 student who is the subject of a missing person report has been
13 missing for more than 24 hours and has not returned to the
14 campus, the institution to initiate the emergency contact
15 procedures in accordance with the student's designation; and

16 (B) establish official notification procedures for a
17 missing student who resides in on-campus housing that—

18 (i) includes procedures for official notification of
19 appropriate individuals at the institution that such student has
20 been missing for more than 24 hours;

21 (ii) requires any official missing person report relating
22 to such student be referred immediately to the institution's
23 police or campus security department; and

24 (iii) if, on investigation of the official report, such
25 department determines that the missing student has been missing
26 for more than 24 hours, requires—

27 (I) such department to contact the individual identified by
28 such student under subparagraph (A) (i);

1 (II) if such student is under 18 years of age, and not an
2 emancipated individual, the institution to immediately contact
3 the custodial parent or legal guardian of such student; and

4 (III) if subclauses (I) or (II) do not apply to a student
5 determined to be a missing person, inform the appropriate law
6 enforcement agency.

7 (2) RULE OF CONSTRUCTION.—Nothing in this subsection shall
8 be construed—

9 (A) to provide a private right of action to any person to
10 enforce any provision of this subsection; or

11 (B) to create a cause of action against any institution of
12 higher education or any employee of the institution for any
13 civil liability.

14

1 **Issue Paper # 13**

2
3 **Origin:** HEOA

4 **Issue:** Hate Crime Reporting

5 **Statutory cites:** Section 485(f) of the HEA

6 **Regulatory cites:** §668.46(c) (3)

7 **DCL GEN-08-12 cite:** Page 98

8 **Summary of issue:** The HEOA expands the list of crimes that
9 institutions must include in hate crime statistics reported to
10 the Department to also include larceny-theft, simple assault,
11 intimidation, and destruction/damage/vandalism of property.

12 **Updated information since 4/14-16 meeting:** The crimes
13 definitions appendix contains the newly added definitions of the
14 crimes added for the purposes of hate crime reporting, as well
15 as definitions of crimes previously included in Appendix D of
16 part 668 that have been updated since the last time that these
17 regulations were negotiated.

18 **Tentative agreement: YES**

19 **Regulatory language:**

20 668.46 Institutional security policies and crime statistics.

21 * * * * *

22 (c) * * *

23 (3) Reported crimes if a hate crime. An institution must
24 report, by category of prejudice, the following crimes reported
25 to local police agencies or to a campus security authority that
26 manifest evidence that the victim was intentionally selected
27 because of the victim's actual or perceived race, gender,
28 religion, sexual orientation, ethnicity, or disability:

1 (i) Any crime it reports pursuant to paragraphs (c) (1) (i)
2 through (vii) of this section.

3 (ii) The crimes of larceny-theft, simple assault,
4 intimidation, and destruction/damage/or vandalism of property.

5 (iii) Any other crime involving bodily injury.

6 [See Crime Appendix for updated and newly added definitions to
7 Appendix D of part 668]

8
9 **Statutory Language:**

10 (f) DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME
11 STATISTICS.—(1) Each eligible institution participating in any
12 program under this title, other than a foreign institution
13 higher education shall on August 1, 1991, begin to collect the
14 following information with respect to campus crime statistics
15 and campus security policies of that institution, and beginning
16 September 1, 1992, and each year thereafter, prepare, publish,
17 and distribute, through appropriate publications or mailings, to
18 all current students and employees, and to any applicant for
19 enrollment or employment upon request, an annual security report
20 containing at least the following information with respect to
21 the campus security policies and campus crime statistics of that
22 institution:

23 * * * * *

24 (F) Statistics concerning the occurrence on campus, in or
25 on noncampus buildings or property, and on public property
26 during the most recent calendar year, and during the 2 preceding
27 calendar years for which data are available—

28 (i) of the following criminal offenses reported to campus
29 security authorities or local police agencies:

1 **(I)** murder;

2 **(II)** sex offenses, forcible or nonforcible;

3 **(III)** robbery;

4 **(IV)** aggravated assault;

5 **(V)** burglary;

6 **(VI)** motor vehicle theft;

7 **(VII)** manslaughter;

8 **(VIII)** arson; and

9 **(IX)** arrests or persons referred for campus disciplinary
10 action for liquor law violations, drug-related violations, and
11 weapons possession; and

12 **(ii)** of the crimes described in subclauses (I) through
13 (VIII) of clause (i), of larceny-theft, simple assault,
14 intimidation, and destruction, damage, or vandalism of property,
15 and of other crimes involving bodily injury to any person, in
16 which the victim is intentionally selected because of the actual
17 or perceived race, gender, religion, sexual orientation,
18 ethnicity, or disability of the victim that are reported to
19 campus security authorities or local police agencies, which data
20 shall be collected and reported according to category of
21 prejudice.

22

1 **Issue Paper # 14**

2
3 **Origin:** HEOA

4 **Issue:** Reporting Emergency Response and Evacuation Procedures

5 **Statutory cites:** Section 485(f) of the HEA

6 **Regulatory cites:** §668.46(a), §668.46(b)(13), §668.46(e), and
7 §668.46(g)

8 **DCL GEN-08-12 cite:** Page 98

9 **Summary of issue:** The HEOA requires institutions to include a
10 statement of emergency response and evacuation procedures in the
11 annual security report that describes how the institution will
12 immediately notify the campus community upon the confirmation of
13 a significant emergency or dangerous situation involving an
14 immediate threat to the health or safety of students or staff
15 occurring on the campus, unless the notification will compromise
16 efforts to contain the emergency.

17 "Campus" is defined in 34 C.F.R. §668.46 as:

- 18 • Any building or property owned or controlled by an
19 institution within the same reasonably contiguous area
20 and used by the institution in direct support of, or in a
21 manner related to, the institution's educational
22 purposes, including residence halls; and
- 23 • Any building or property that is within or reasonably
24 contiguous to the area identified above that is owned by
25 the institution but controlled by another person, is
26 frequently used by students, and supports institutional
27 purposes (such as a food or other retail vendor).

1 **Updated information since 4/14-16 meeting:** We have clarified the
2 distinction between a timely warning and an emergency
3 notification in §668.46(e)(3) to say that if an institution
4 follows its emergency notification procedures, it does not also
5 have to do a timely warning based on the same circumstances;
6 however, an institution must provide adequate follow-up
7 information to the community as needed. We have also clarified
8 in §668.46(g)(2)(ii) that an emergency notification may be sent
9 to a segment or segments of the population if appropriate. We
10 have added requirements that an institution include 1) a
11 statement that it will not delay and take into account only the
12 safety of the community in determining the content of the
13 notification and initiating the system (668.46(g)(3)) and 2) a
14 statement of procedures to provide information to the larger
15 community (668.46(g)(5))

16 **Regulatory language:**

17 §668.46 Institutional security policies and crime statistics

18 (a) *Additional definitions that apply to this section.*

19 * * * * *

20 Test: Regularly scheduled drills, exercises, and
21 appropriate follow-through activities, designed for assessment
22 and evaluation of emergency plans and capabilities.

23 * * * * *

24 (b) *Annual security report.* An institution must prepare
25 an annual security report that contains, at a minimum, the
26 following information:

27 * * * * *

28 (13) Beginning with the annual security report distributed
29 by October 1, 2010, a statement of policy regarding emergency

1 response and evacuation procedures, as described in paragraph
2 (g) of this section.

3 (14) Beginning with the annual security report distributed
4 by October 1, 2010, a statement of policy regarding missing
5 person notification procedures, as described in paragraph (h) of
6 this section.

7 * * *

8 (e) *Timely warning and emergency notification.* (1) An
9 institution must, in a manner that is timely and will aid in the
10 prevention of similar crimes, report to the campus community on
11 crimes that are -

12 (i) Described in paragraph (c) (1) and (3) of this section;

13 (ii) Reported to campus security authorities as identified
14 under the institution's statement of current campus policies
15 pursuant to paragraph (b) (2) of this section or local police
16 agencies; and

17 (iii) Considered by the institution to represent a threat
18 to students and employees.

19 (2) An institution is not required to provide a timely
20 warning with respect to crimes reported to a pastoral or
21 professional counselor.

22 (3) If there is an immediate threat to the health or safety
23 of students or employees occurring on campus, as described in
24 paragraph (g) (1) of this section, an institution must follow its
25 emergency notification procedures. An institution that follows
26 its emergency notification procedures is not required to issue a
27 timely warning based on the same circumstances; however, the
28 institution must provide adequate follow-up information to the
29 community as needed.

1 ~~(3) The timely warning requirement does not apply in the~~
2 ~~circumstances covered under paragraph (g) of this section. In~~
3 ~~the case that there is an immediate threat to the health or~~
4 ~~safety of students or employees occurring on campus, as~~
5 ~~described in paragraph (g) (1) of this section, an institution's~~
6 ~~emergency notification procedures will supplant a timely warning~~
7 ~~communication.~~

8 * * *

9 (g) Emergency Response and Evacuation Procedures. An
10 institution must include a statement of policy regarding its
11 emergency response and evacuation procedures in the annual
12 security report. This statement must include --

13 (1) Procedures to immediately notify the campus community
14 upon the confirmation of a significant emergency or dangerous
15 situation involving an immediate threat to the health or safety
16 of students or employees occurring on the campus.

17 ~~(2) The positions of the individuals who will~~

18 (2) A description of the process the institution will use
19 to:

20 (i) Confirm that there is a significant emergency or
21 dangerous situation as described in paragraph (g) (1) of this
22 section;

23 (ii) Determine the appropriate segment or segments of the
24 campus community to receive a notification;

25 (iii) Determine the content of the notification; and

26 ~~(iii) Determine when to send the notification;~~

27 (iv) Initiate the notification system.

1 ~~(3) Plans to ensure that the officials in (g) (2) of this~~
2 ~~paragraph are appropriately trained to carry out these duties.~~

3 (3) A statement that the institution will, without delay,
4 and taking into account only the safety of the community,
5 determine the content of the notification and initiate the
6 notification system.

7 (4) A list of the titles of the person(s) or
8 organization(s) responsible for carrying out the actions
9 described in paragraph (g) (2) of this section.

10 ~~(4) Procedures to notify parents and families in an~~
11 ~~emergency situation and provide accurate, timely information.~~

12 (5) Procedures for disseminating emergency information to
13 the larger community.

14 (6) ~~Procedures Plans~~ to test the emergency response and
15 evacuation procedures on at least an annual basis.

16 (i) A test may be announced or unannounced. ~~but it must be~~
17 ~~conducted at a time when most of the students, faculty, and~~
18 ~~staff are expected to be present on campus.~~

19 ~~(ii) At least annually, t~~The institution must publicize its
20 emergency response and evacuation procedures ~~as part of in~~
21 conjunction with at least one test per calendar year.

22 (iii) An institution must document each test, including a
23 description of the exercise, the date, time, and whether it was
24 announced or unannounced.

25 (7) A statement that, unless issuing a notification will
26 compromise efforts to contain the emergency, the institution
27 will follow its emergency notification procedures in any
28 situation that presents an immediate threat to the health or
29 safety of students or employees occurring on campus.

1 **Statutory Language:**

2 (f) DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME
3 STATISTICS.—(1) Each eligible institution participating in any
4 program under this title, other than a foreign institution
5 higher education shall on August 1, 1991, begin to collect the
6 following information with respect to campus crime statistics
7 and campus security policies of that institution, and beginning
8 September 1, 1992, and each year thereafter, prepare, publish,
9 and distribute, through appropriate publications or mailings, to
10 all current students and employees, and to any applicant for
11 enrollment or employment upon request, an annual security report
12 containing at least the following information with respect to
13 the campus security policies and campus crime statistics of that
14 institution:

15 * * * * *

16 (J) A statement of current campus policies regarding
17 immediate emergency response and evacuation procedures,
18 including the use of electronic and cellular communication (if
19 appropriate), which policies shall include procedures to—

20 (i) immediately notify the campus community upon the
21 confirmation of a significant emergency or dangerous situation
22 involving an immediate threat to the health or safety of
23 students or staff occurring on the campus, as defined in
24 paragraph (6), unless issuing a notification will compromise
25 efforts to contain the emergency;

26 (ii) publicize emergency response and evacuation procedures
27 on an annual basis in a manner designed to reach students and
28 staff; and

29 (iii) test emergency response and evacuation procedures on
30 an annual basis.

31

1 **Issue Paper #15**

2 **Origin:** HEOA

3 **Issue:** Financial Assistance for individuals with intellectual
4 disabilities

5 **Statutory cites:** Sections 484(s) and 760 of the HEA

6 **Regulatory cites:** §600.2, §600.4, §600.5, 600.6, §668.8,
7 §600.32, §668.43, §668 new subpart O

8 **DCL GEN-08-12 cite:** Pages 94-95, 163-164

9 **Summary of issue:** The HEOA adds a provision to the HEA to
10 expand eligibility for funding under the Federal Pell Grant,
11 FSEOG, and FWS programs to students with intellectual
12 disabilities.

13 **Updated information since 4/14-16 meeting:** We have added new
14 paragraph (6) to the definition of a comprehensive transition
15 and postsecondary program in §668.231 to clarify that these
16 programs must provide opportunities for students with
17 intellectual disabilities to participate in coursework and other
18 activities with students without disabilities. We have also
19 modified §668.233(c) to make it clear that documentation is
20 needed both to establish cognitive impairment and current or
21 former eligibility for a free appropriate public education in
22 order to meet the definition of a 'student with an intellectual
23 disability.'

24 **Regulatory language:**

25 §600.2 Definitions.

26 * * * * *

27 *Educational program:* (1) A legally authorized postsecondary
28 program of organized instruction or study that:

1 (i) Leads to an academic, professional, or vocational
2 degree, or certificate, or other recognized educational
3 credential, ~~or is leads to an outcome or outcomes established by~~
4 ~~the institution for students enrolled in a comprehensive~~
5 ~~transition and postsecondary program, as described in subpart 0~~
6 ~~of part 668 34 CFR part 668, subpart 0~~; and

7 (ii) May, in lieu of credit hours or clock hours as a
8 measure of student learning, utilize direct assessment of
9 student learning, or recognize the direct assessment of student
10 learning by others, if such assessment is consistent with the
11 accreditation of the institution or program utilizing the
12 results of the assessment and with the provisions of §668.10.

13 * * * * *

14 §600.4 Institution of higher education.

15 * * *

16 (a) (4) (ii) That is at least a two-academic-year program
17 acceptable for full credit toward a baccalaureate degree; or

18 (iii) That is at least a one-academic-year training program
19 that leads to a certificate, degree, or other recognized
20 educational credential and prepares students for gainful
21 employment in a recognized occupation; ~~and~~

22 * * *

23 (5) * * *

24 (ii) Approved by a State agency listed in the FEDERAL
25 REGISTER in accordance with 34 CFR part 603, if the institution
26 is a public postsecondary vocational educational institution
27 that seeks to participate only in Federal assistance programs;
28 ~~and-~~

1 (6) May admit students with intellectual disabilities to a
2 comprehensive transition and postsecondary program, as provided
3 in ~~subpart O of part 668~~ 34 CFR part 668, subpart O.

4 * * * * *

5 §600.5 Proprietary institution of higher education.

6 * * *

7 (a) (5) Provides an eligible program of training, as defined
8 in 34 CFR 668.8, to prepare students for gainful employment in a
9 recognized occupation;

10 * * *

11 (a) (7) Has been in existence for at least two years; ~~and~~

12 (8) Has no more than 90 percent of its revenues derived
13 from title IV, HEA program funds, as determined under paragraph
14 (d) of this section; and.

15 (9) May admit students with intellectual disabilities to a
16 comprehensive transition and postsecondary program, as provided
17 in 34 CFR part 668, subpart O.

18 * * * * *

19 §600.6 Postsecondary vocational institution.

20 * * * * *

21 (a) (4) Provides an eligible program of training, as defined
22 in 34 CFR 668.8, to prepare students for gainful employment in a
23 recognized occupation;

24 (5) * * *

25 (ii) Approved by a State agency listed in the FEDERAL
26 REGISTER in accordance with 34 CFR part 603, if the institution
27 is a public postsecondary vocational educational institution

1 that seeks to participate only in Federal assistance programs;
2 ~~and~~

3 (6) Has been in existence for at least two years; ~~and-~~

4 (7) May admit students with intellectual disabilities to a
5 comprehensive transition and postsecondary program, as provided
6 in ~~subpart O of part 668~~ 34 CFR part 668, subpart O.

7 * * * * *

8 §668.8 Eligible program.

9 * * *

10 (n) For title IV, HEA program purposes, ~~the term~~ *eligible*
11 *program* includes a direct assessment program approved by the
12 Secretary under ~~34 CFR~~ §668.10 and a comprehensive transition
13 and postsecondary program approved by the Secretary under ~~34 CFR~~
14 §668.232.

15 §668.32 Student eligibility--general.

16 A student is eligible to receive title IV, HEA program
17 assistance if the student -

18 (a) (1) (i) Except as provided in paragraph (n) of this
19 section, is a regular student enrolled, or accepted for
20 enrollment, in an eligible program at an eligible institution;

21 * * * * *

22 (k) * * *

23 (9) 34 CFR 686.22 for the TEACH Grant program; ~~and~~

24 (l) Is not ineligible under §668.40; ~~and~~

25 (m) In the case of a student who has been convicted of, or
26 has pled nolo contendere or guilty to, a crime involving fraud in

1 obtaining title IV, HEA program assistance, has completed the
2 repayment of such assistance to:

3 (1) The Secretary; or

4 (2) The holder, in the case of a title IV, HEA program
5 loan-; and

6 (n) Is enrolled in a comprehensive transition and
7 postsecondary program under subpart O of this part and meets the
8 student eligibility criteria in that subpart.

9 * * * * *

10 §668.43 Institutional information.

11 * * *

12 (a) (7) A description of the services and facilities any
13 special facilities and services available to students with
14 disabilities disabled students, including students with
15 intellectual disabilities as defined in subpart O of this part;

16 * * * * *

17 **Subpart O--Financial Assistance for Students With**
18 **Intellectual Disabilities**

19 §668.230 Scope and purpose.

20 This subpart establishes **rules regulations** that apply to an
21 institution that offers comprehensive transition and
22 postsecondary programs to students with intellectual
23 disabilities. Students enrolled in these programs are eligible
24 for Federal financial assistance under the Federal Pell, FSEOG,
25 and Federal Work Study programs. Except for provisions related
26 to needs analysis, the Secretary may waive any title IV, HEA
27 program requirement related to the Federal Pell Grant, FSEOG,
28 and FWS programs or institutional eligibility, to ensure that

1 students with intellectual disabilities remain eligible for
2 funds under these assistance programs. However, unless provided
3 in this subpart or subsequently waived by the Secretary,
4 students with intellectual disabilities and institutions that
5 offer comprehensive transition and postsecondary programs are
6 subject to the same **rules regulations** and procedures that
7 otherwise apply to title IV, HEA program participants.

8 (Authority:)

9 §668.231 Definitions.

10 **The following definitions apply to this subpart:**

11 Comprehensive transition and postsecondary program means a
12 degree, certificate, non-degree, or non-certificate program
13 that--

14 (1) Is offered by a participating institution;

15 (2) Is delivered to students physically attending the
16 institution;

17 (3) Is designed to support students with intellectual
18 disabilities who are seeking to continue academic, career and
19 technical, and independent living instruction at an institution
20 of higher education in order to prepare for gainful employment;

21 (4) Includes an advising and curriculum structure;

22 (5) Requires students with intellectual disabilities to be
23 ~~enrolled~~ **participate** on at least a half-time basis, and, as
24 determined by the institution, ~~engaged academically by~~ **in**
25 **one or more of the following activities:**

26 (i) Taking credit-bearing courses with students without
27 disabilities;

1 (ii) Auditing or otherwise participating in courses with
2 students without disabilities for which the student does not
3 receive regular academic credit;

4 (iii) Taking noncredit-bearing, nondegree courses with
5 students without disabilities; or

6 (iv) Participating in internships or work-based training in
7 settings with individuals without disabilities; and

8 (6) Provides students with intellectual disabilities with
9 opportunities to participate in ~~inclusive activities and~~
10 ~~coursework and other activities~~ with students without
11 disabilities.

12 ~~Free appropriate public education (FAPE) is defined in 34~~
13 ~~CFR 300.17.~~

14 Student with an intellectual disability means a student--

15 (1) With mental retardation or a cognitive impairment
16 characterized by significant limitations in--

17 (i) Intellectual and cognitive functioning; and

18 (ii) Adaptive behavior as expressed in conceptual, social,
19 and practical adaptive skills; ~~and~~ and

20 (2) Who is currently, or was formerly, eligible for a free
21 appropriate public education (FAPE), ~~as defined in 34 CFR~~
22 ~~300.17,~~ under the Individuals with Disabilities Education Act
23 (20 U.S.C. 1401), ~~including a student who was determined~~
24 ~~eligible for services under FAPE but was home-schooled or~~
25 ~~attended private school.~~

26 (Authority:)

1 §668.232 Program eligibility.

2 An institution that offers a comprehensive transition and
3 postsecondary program must apply to the Secretary to have the
4 program determined to be an eligible program. The institution
5 applies under the provisions in 34 CFR 600.20 for adding an
6 educational program in 34 CFR 600.20, and must include in its
7 application--

8 (a) A description of the comprehensive transition and
9 postsecondary program that addresses all of the components of
10 the program, as defined in §668.231, including a detailed
11 description of the instructional content of the academic and
12 non-academic courses or components of the program;

13 (b) The institution's ~~its~~ policy for determining whether a
14 student enrolled in the program is making satisfactory academic
15 progress;

16 (c) The number of weeks of instructional time in the
17 program, the number of semester or quarter credit hours, clock
18 hours, or, in the case of a non-credit or reduced credit course,
19 the equivalent credit or clock hours in the program, and the
20 number of those hours needed to be a full-time and half-time
21 student;

22 (d) A description of the educational credential offered
23 (e.g., degree or certificate) or identified outcome or outcomes
24 expected of students enrolled in the program established by the
25 institution for all students enrolled in the program;

26 (e) A copy of the letter or notice sent to the
27 institution's accrediting agency informing the agency of its
28 comprehensive transition and postsecondary program. The letter
29 or notice must include a description of the items in paragraphs
30 (a) through (d) of this section; and. how the institution will

~~evaluate the program based on the standards established by the institution for success with respect to student achievement--~~

(f) Any other information the Secretary may require.

(Authority:)

§668.233 Student eligibility.

A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and Federal Work Study program assistance under this subpart if--

(a) The student satisfies the general student eligibility requirements under §668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student--

(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;

(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

(3) Is making satisfactory progress according to the institution's published standards for students enrolled in its comprehensive transition and postsecondary programs;

(b) The student is enrolled on at least a half-time basis, ~~as determined by the institution,~~ in a comprehensive transition and postsecondary program approved by the Secretary; ~~and~~

(c) The institution obtains a record from a local educational agency that the student is or was eligible for a free appropriate public education under the Individuals with Disabilities Education Act; and

1 | (ed) The institution obtains documentation establishing
2 that the student has an intellectual disability. Acceptable
3 documentation includes--

4 (1) A documented comprehensive and individualized psycho-
5 educational evaluation and diagnosis of an intellectual
6 disability by a psychologist or other qualified professional; or

7 (2) A record of the disability from a local or State
8 educational agency, or government agency, such as the Social
9 Security Administration or a vocational rehabilitation agency,
10 that describes the abilities and limitations of the student
11 which identifies the intellectual disability.

12 (Authority:)

13

1 Issue Paper #16

2 **Origin:** HEOA

3 **Issue:** Readmission requirements for servicemembers

4 **Statutory cites:** Section 484C of the HEA

5 **Regulatory cites:** New §668.18

6 **DCL GEN-08-12 cite:** Pages 63-65

7 **Summary of issue:** Effective August 14, 2008, an institution
8 may not deny readmission to a servicemember of the uniformed
9 services for reasons relating to that service. In addition, a
10 student who is readmitted to an institution under this section
11 must be readmitted with the same academic status as the student
12 had when he or she last attended the institution. An affected
13 servicemember is any individual who is a member of, applies to
14 be a member of, or performs, has performed, applies to perform,
15 or has the obligation to perform, service in the uniformed
16 services. This applies to service in the uniformed services,
17 whether voluntary or involuntary, on active duty in the Armed
18 Forces, including service as a member of the National Guard or
19 Reserve, for a period of more than 30 days under a call or order
20 to active duty of more than 30 days.

21 Any student whose absence from an institution of higher
22 education is necessitated by reason of service in the uniformed
23 services is entitled to readmission if

- 24 • the student (or an appropriate officer of the Armed Forces
25 or official of the Department of Defense) gives advance
26 written or verbal notice of such service to the appropriate
27 official at the institution;
- 28 • the cumulative length of the absence and of all previous
29 absences from that institution of higher education by

1 reason of service in the uniformed services does not exceed
2 five years; and

- 3 • except as otherwise provided in this section, the student
4 submits a notification of intent to reenroll in the
5 institution.

6 However, no advance notice by the student is required if
7 the giving of such notice is precluded by military necessity,
8 such as a mission, operation, exercise, or requirement that is
9 classified; or a pending or ongoing mission, operation,
10 exercise, or requirement that may be compromised or otherwise
11 adversely affected by public knowledge. In addition, any
12 student (or an appropriate officer of the Armed Forces or
13 official of the Department of Defense) who did not give advance
14 notice of service to the appropriate official at the institution
15 may meet the notice requirement by submitting, at the time the
16 student seeks readmission, an attestation to the student's
17 institution that the student performed service in the uniformed
18 services that necessitated the student's absence from the
19 institution.

20 When determining the cumulative length of the student's
21 absence for service, the period of service does not include any
22 service

- 23 • that is required, beyond five years, to complete an initial
24 period of obligated service;
- 25 • during which the student was unable to obtain orders
26 releasing the student from a period of service in the
27 uniformed services before the expiration of the five-year
28 period and the inability to obtain those orders was through
29 no fault of the student; or

- 1 • performed by a member of the Armed Forces (including the
2 National Guard and Reserves) who is
 - 3 o ordered to or retained on active duty under section
4 688, 12301(a), 12301(g), 12302, 12304, or 12305 of
5 Title 10, U.S.C., or under section 331, 332, 359, 360,
6 367, or 712 of Title 14, U.S.C.;
 - 7 o ordered to or retained on active duty (other than for
8 training) under any provision of law because of a war
9 or national emergency declared by the President or the
10 Congress;
 - 11 o ordered to active duty (other than for training) in
12 support of an operational mission for which personnel
13 have been ordered to active duty under section 12304
14 of Title 10, U.S.C.;
 - 15 o ordered to active duty in support of a critical
16 mission or requirement of the Armed Forces (including
17 the National Guard or Reserve); or
 - 18 o called into Federal service as a member of the
19 National Guard under chapter 15 of Title 10, U.S.C.,
20 or section 12406 of Title 10, U.S.C.

21 An affected servicemember must, upon the completion of a
22 period of service in the uniformed services, notify the
23 institution of his or her intent to return to the institution
24 not later than three years after the completion of the period of
25 service. However, a student who is hospitalized for or
26 convalescing from an illness or injury incurred in or aggravated
27 during the performance of service in the uniformed services must
28 notify the institution of his or her intent to return to the
29 institution not later than two years after the end of the period
30 that is necessary for recovery from such illness or injury. A

1 student who fails to apply for readmission within the required
2 period does not automatically forfeit eligibility for
3 readmission to the institution, but is subject to the
4 institution's established leave of absence policy and general
5 practices.

6 A student who submits an application for readmission to an
7 institution must provide to the institution documentation to
8 establish that

- 9 • the student has not exceeded the specified service
10 limitations; and
- 11 • the student's eligibility for readmission has not been
12 terminated.

13 An institution may not delay or attempt to avoid a
14 readmission of a student under this section by demanding
15 documentation that does not exist, or is not readily available,
16 at the time of readmission.

17 A student's eligibility for readmission to an institution
18 under this section by reason of such student's service in the
19 uniformed services terminates upon the occurrence of any of the
20 following events:

- 21 • a separation of such person from the Armed Forces
22 (including the National Guard and reserves) with a
23 dishonorable or bad conduct discharge;
- 24 • a dismissal of such person permitted under section 1161(a)
25 of Title 10, U.S.C.; or
- 26 • a dropping of such person from the rolls pursuant to
27 section 1161(b) of Title 10, U.S.C.

1 These provisions were based on the provisions of the
2 Uniformed Services Employment and Reemployment Rights Act
3 (USERRA) .

4 Title 10 of the U.S.C. can be accessed at
5 <http://www.access.gpo.gov/uscode/title10/title10.html>

6 Title 14 of the U.S.C. can be accessed at
7 <http://www.access.gpo.gov/uscode/title14/title14.html>

8 Note: The HEOA also added a provision to the HEA at section
9 131(f) which, effective August 14, 2009, requires the Secretary
10 to coordinate with the Secretary of Defense and the Secretary of
11 Veterans Affairs to create a searchable website within the
12 Federal student financial aid website that, in addition to
13 containing information about all Federal and State student
14 financial assistance, must contain information about the
15 readmission requirements under section 484C of the HEA and other
16 student services for which members of the Armed Forces may be
17 eligible. In addition, the Secretary is required to work with
18 the Secretary of Defense and the Secretary of Veterans Affairs
19 to make the availability of the Armed Forces information website
20 widely known to members of the Armed Forces, institutions of
21 higher education, and the general public. The Department does
22 not plan to expand on this provision in regulations and,
23 therefore, has not included it as a provision that will be
24 negotiated.

25 **Updated information since 3/2-4 meetings:**

26 *General*

27 Section 668.18(a) would include the general requirements of
28 the statute that an institution may not deny readmission to a
29 servicemember, but must readmit the servicemember with the same

1 academic status as the student had when the student was last
2 admitted to the institution. The regulations would specify that
3 the institution must admit the student promptly, and define what
4 it means to "promptly readmit" a student. Section 668.18(a)
5 would also specify what it means to readmit a person with the
6 same academic status.

7 In the case of a student who is not prepared to resume the
8 program at the point where he or she left off, §668.18(a) would
9 require the institution to make reasonable efforts to help the
10 student become prepared including, but not limited to, providing
11 refresher courses at no extra cost. The institution would not
12 be required to readmit the student if, after reasonable efforts
13 by the institution, the student is still not prepared to resume
14 the program at the point where he or she left off.

15 Section 668.18(a) would clarify that the requirements of
16 this section apply to an institution even if that institution
17 has undergone a change of ownership since the student ceased
18 attendance.

19 Finally, §668.18(a) would make clear that the provisions of
20 this section supersede any State law or other requirement that
21 reduce, limit, or eliminate any right or benefit provided by
22 this section.

23 *Service in the uniformed services*

24 Section 668.18(b) would delineate what service in the
25 uniformed services means for purposes of this section. This
26 section would expand upon the statutory language to clarify that
27 service in the uniformed services includes active duty for
28 training and full-time National Guard duty under Federal
29 authority (i.e, not National Guard service under authority of
30 State law). In addition, the regulations would specify that

1 qualifying service must be for more than 30 *consecutive* days
2 under a call or order to active duty of more than 30 *consecutive*
3 days.

4 *Readmission procedures*

5 Section 668.18(c) would list the conditions under which an
6 institution must readmit a servicemember. The regulations would
7 require an institution to designate one or more offices for the
8 purpose of receiving advance notice from students of their
9 absence from the institution necessitated by service in the
10 uniformed services, and notice from students of an intent to
11 return to the institution. The regulations would make clear
12 that advance notice must be provided by the student as far in
13 advance as is reasonable under the circumstances. However such
14 notice would not need to follow any particular format, nor would
15 a student have to indicate as part of the notice whether the
16 student intends to return to the institution. Also, the
17 regulations would make clear that an institution may not set a
18 brightline deadline for submission of any such notice, but must
19 judge the timeliness of submission by the facts of a particular
20 case. As such notice may be provided by an appropriate officer
21 of the Armed Forces, the regulations would clarify who an
22 "appropriate officer" is. Section 668.18(c) would also provide
23 that a student's notice of intent to return may be provided
24 orally or in writing, as specified in the statute for advance
25 notice from students of their absence from the institution
26 necessitated by service in the uniformed services. The notice
27 of intent to return would not need to follow any particular
28 format.

29 *Exceptions to advance notice*

1 Section 668.18(d) would restate the statutory language for
2 exceptions to advance notice.

3 *Cumulative length of absence*

4 Section 668.18(e) would list the types of service that are
5 not included in the cumulative length of the student's absence,
6 including a brief description of the types of services
7 referenced in titles 10 and 14 of the United States Code.

8 *Notification of Intent to Reenroll*

9 Section 668.18(f) would restate the statutory provision
10 providing that a student who fails to apply for readmission
11 within the required periods does not automatically forfeit
12 eligibility for readmission to the institution, but is subject
13 to the institution's established leave of absence policy and
14 general practices.

15 *Documentation*

16 Section 668.18(g) would list the documentation that a
17 student must submit with an application for readmission. The
18 regulations would list several types of documentation that
19 satisfy the documentation requirements, making clear that the
20 types of documentation available or necessary will vary from
21 case to case.

22 *Termination of readmission eligibility*

23 Section 668.18(f) would list the circumstances under which
24 a student's eligibility for readmission to an institution would
25 be terminated, including a brief description of the types of
26 circumstances referenced in title 10 of the United States Code.

27 **Updated information since 4/14-16 meetings:**

28 *General*

1 Section 668.18(a)(2)(i) would clarify that an institution
2 must promptly readmit an individual who was last admitted to the
3 institution, but did not begin attendance if the reason the
4 individual did not begin attendance was because of the
5 individual's membership, application for membership, performance
6 of service, application for service or obligation to perform
7 service. Section 668.18(a)(2)(ii) would clarify that,
8 generally, an institution would be required to readmit a student
9 into the next class or classes in the student's program unless
10 the student requests a later date of admission, or unusual
11 circumstances require the institution to admit the student at a
12 later date. The phrase "absent unusual circumstances" in the
13 last draft referred to *when* the institution would readmit the
14 student, not to *whether* the institution would readmit the
15 student. Whether the institution must readmit the student is
16 addressed in §668.18(a)(2)(iv).

17 The following changes were made to §668.18(a)(2)(iii),
18 which specifies what it means to readmit a person with the same
19 academic status:

- 20 • Clarification that an institution may readmit a student to a
21 different program if the student requests or agrees to
22 admission to the different program (to address concerns that
23 the regulations would not allow an institution to readmit a
24 student to a different program, even if the student wanted to
25 change programs);
- 26 • Clarification that an institution is not required to readmit a
27 student with the same enrollment status if the student
28 requests or agrees to admission at a different enrollment
29 status;
- 30 • Clarification that an institution is not required to readmit a

1 student with the same number of completed credit hours or
2 clock hours if the student is readmitted to a different
3 program to which the hours are not transferable;

- 4 • Use of the term "academic standing" instead of "student
5 status" and the inclusion of satisfactory academic progress as
6 an example of academic standing;
- 7 • For the first academic year in which the student returns, if
8 the student is readmitted to the same program, an institution
9 would have to readmit the student with the same institutional
10 charges that the student was or would have been assessed for
11 the academic year during which the student left the
12 institution. For subsequent academic years, the institution
13 could charge the student the same charges that other students
14 in the program are charged. Also, if the student is admitted
15 to a different program, the institution could charge the
16 student the same charges that other students in the program
17 are charged; and
- 18 • If equipment is required in lieu of equipment the student paid
19 for when the student was previously enrolled, the institution
20 must provide the new equipment to the student at no cost.

21 In addition to not requiring an institution to readmit a
22 student if, after making reasonable efforts to help a student
23 become prepared to resume a program, the student is not prepared
24 to resume the program, §668.18(a)(2)(iv) would not require an
25 institution to readmit a student if, after making reasonable
26 efforts to enable a student to complete a program, the student
27 will not be able to complete the program. This section would
28 also clarify that an institution would not be required to
29 readmit a student if there are no reasonable efforts the
30 institution can take to prepare the student to resume the

1 program at the point where he or she left off or to enable the
2 student to complete the program.

3 Allowing the student to retake a pretest at no extra cost
4 has been added as an example of a possible reasonable effort an
5 institution must make to enable a student to resume a program.

6 *Service in the uniformed services*

7 A change was not made to include National Guard duty under
8 State authority. As with the USERRA, National Guard service
9 under authority of State law is not protected by section 484C of
10 the HEA.

11 *Readmission procedures*

12 Section 668.18(c) continues to provide that a student's
13 notice of intent to return may be provided orally or in writing.
14 However, the preamble would make clear that the purpose of this
15 provision is to prevent an institution from denying readmission
16 of a student solely because the student did not notify the
17 institution of his or her intent to return in writing. It is
18 not anticipated that the student's readmission will be a
19 paperless transaction. Note that the student must provide the
20 institution with the documents required by §668.18(g) to
21 demonstrate his or her eligibility for readmission under this
22 section.

23 **Tentative agreement:** No

24 **Regulatory language:**

25 [The whole section is new. The mark-up shows changes
26 to/expansion on the statutory requirements of the HEOA.]

27 §668.18 Readmission requirements for servicemembers.

28 (a) General. (1) An institution may not deny readmission
29 to a person who is a member of, applies to be a member of,

1 performs, has performed, applies to perform, or has an
2 obligation to perform, service in the uniformed services on the
3 basis of that membership, application for membership,
4 performance of service, application for service, or obligation
5 to perform service.

6 (2) (i) An institution must promptly readmit to the
7 institution a person described in paragraph (a) (1) of this
8 section with the same academic status as the student had when
9 the student last attended the institution or was last admitted
10 to the institution, but did not begin attendance because of that
11 membership, application for membership, performance of service,
12 application for service, or obligation to perform service.

13 (ii) "Promptly readmit" means as soon as practicable under
14 the circumstances of each case. Absent unusual circumstances,
15 the individual must be that the institution must readmitted the
16 student into the next class or classes in the student's program
17 beginning after the individual student provides notice of his or
18 her intent to reenroll, unless the individual student requests a
19 later date of readmission or unusual circumstances require the
20 institution to admit the student at a later date.

21 (iii) To readmit a person with the "same academic status"
22 means that the institution admits the student--

23 (A) To the same program to which he or she was last
24 admitted by the institution or, if that exact program is no
25 longer offered, the program that is most similar to that
26 program, unless the student requests or agrees to admission to a
27 different program;

28 (B) At the same enrollment status that the student last
29 held at the institution, unless the student requests or agrees
30 to admission at a different enrollment status;

1 (C) With the same number of ~~completed~~ credit hours or
2 clock hours ~~completed previously by the student, unless the~~
3 ~~student is readmitted to a different program to which the~~
4 ~~completed credit hours or clock hours are not transferable;~~

5 (D) With the same ~~student status~~ academic standing (e.g.,
6 with the same satisfactory academic progress status ~~if the~~
7 ~~student was on probation when he or she last attended the~~
8 ~~institution, the student is readmitted in a probation status~~) ~~the~~
9 ~~student previously had;~~

10 (E) (1) If the student is readmitted to the same program,
11 for the first academic year in which the student returns,
12 assesses the same institutional charges that the student was or
13 would have been assessed for the academic year during which the
14 student left the institution ~~With the same institutional charges~~
15 ~~that would have been charged had the student been continuously~~
16 ~~enrolled; or~~

17 (2) If the student is admitted to a different program, and
18 for subsequent academic years for a student admitted to the same
19 program, assesses no more than the institutional charges that
20 other students in the program are assessed for that academic
21 year; and

22 (F) Waives charges for equipment required in lieu of
23 equipment the student paid for when the student was previously
24 enrolled. ~~With the same satisfactory academic progress status.~~

25 (iv) (A) If ~~the~~ institution determines that the student is
26 not prepared to resume the program with the same academic status
27 at the point where the student left off, ~~or will not be able to~~
28 ~~complete the program,~~ the institution must make reasonable
29 efforts to help the student become prepared ~~or to enable the~~
30 ~~student to complete the program~~ including, but not limited to,

1 providing refresher courses at no extra cost and allowing the
2 student to retake a pretest at no extra cost.

3 (B) The institution is not required to readmit the student
4 on his or her return if--

5 (1) ~~He or she is not, a~~After reasonable efforts by the
6 institution, the institution determines that the student is not
7 prepared to resume the program at the point where he or she left
8 off;

9 (2) After reasonable efforts by the institution, the
10 institution determines that the student is unable to complete
11 the program; or

12 (3) The institution determines that there are no
13 reasonable efforts the institution can take to prepare the
14 student to resume the program at the point where he or she left
15 off or to enable the student to complete the program;

16 (BC) (±1) "Reasonable efforts" means actions that do not
17 place an undue hardship on the institution.

18 (±2) "Undue hardship" means an action requiring
19 significant difficulty or expense.

20 (ED) The institution carries the burden to prove by a
21 preponderance of the evidence that the student is not prepared
22 to resume the program with the same academic status at the point
23 where the student left off, or that the student will not be able
24 to complete the program, ~~after the institution makes reasonable~~
25 ~~efforts to help the student become prepared.~~

26 (3) This provision section applies to an institution that
27 has continued in operation since the student ceased attending or
28 was last admitted to the institution but did not begin

1 attendance, notwithstanding any changes of ownership of the
2 institution since the student ceased attendance.

3 (4) The requirements of this section supersede any State
4 law (including any local law or ordinance), contract, agreement,
5 policy, plan, practice, or other matter that reduces, limits, or
6 eliminates in any manner any right or benefit provided by this
7 section.

8 (b) Service in the uniformed services. For purposes of
9 this section, service in the uniformed services means service,
10 whether voluntary or involuntary, in the Armed Forces, including
11 ~~such~~ service by a member of the National Guard or Reserve, on
12 active duty, active duty for training, or full-time National
13 Guard duty under Federal authority, for a period of more than 30
14 consecutive days under a call or order to active duty of more
15 than 30 consecutive days.

16 (c) Readmission procedures. (1) Any student whose
17 absence from an institution is necessitated by reason of service
18 in the uniformed services shall be entitled to readmission to
19 the institution if--

20 (i) Except as provided in paragraph (d) of this section,
21 the student (or an appropriate officer of the Armed Forces or
22 official of the Department of Defense) gives advance oral or
23 written ~~or verbal~~ notice of such service to an office designated
24 by the ~~appropriate official at the~~ institution, and
25 provides~~providing~~ such notice as far in advance as is reasonable
26 under the circumstances;

27 (ii) The cumulative length of the absence and of all
28 previous absences from that institution by reason of service in
29 the uniformed services, including only the time the student

1 spends actually performing service in the uniformed services,
2 does not exceed five years; and

3 (iii) Except as provided in paragraph (f) of this section,
4 the student gives oral or written notice~~ifies the institution~~ of
5 his or her intent to return to an office designated by the
6 institution--

7 (A) For a student who completes a period of service in the
8 uniformed services, not later than three years after the
9 completion of the period of service; or

10 (B) For a student who is hospitalized for or convalescing
11 from an illness or injury incurred in or aggravated during the
12 performance of service in the uniformed services, two years
13 after the end of the period that is necessary for recovery from
14 such illness or injury.

15 (2)(i) An institution must designate one or more offices
16 at the institution that a student may ~~readily~~ contact to provide
17 notification of service required by paragraph (c)(1)(i) of this
18 section and notification of intent to return required by
19 paragraph (c)(1)(iii) of this section.

20 (ii) An institution may not require that the notice
21 provided by the student under paragraph (c)(1)(i) or (c)(1)(iii)
22 of this section follow any particular format.

23 (iii) The notice provided by the student under paragraph
24 (c)(1)(i) of this section--

25 (A) May not be subject to any ~~brightline~~ rule for
26 timeliness; timeliness must be determined by the facts in any
27 particular case; and

28 (B) Does not need to indicate whether the student intends
29 to return to the institution.

1 (iv) For purposes of paragraph (c)(1)(i) of this section,
2 an "appropriate officer" is a commissioned, warrant, or
3 noncommissioned officer authorized to give such notice by the
4 military service concerned.

5 (d) Exceptions to advance notice. (1) No notice is
6 required under paragraph (c)(1)(i) of this section if the giving
7 of such notice is precluded by military necessity, such as--

8 (i) A mission, operation, exercise, or requirement that is
9 classified; or

10 (ii) A pending or ongoing mission, operation, exercise, or
11 requirement that may be compromised or otherwise adversely
12 affected by public knowledge; or

13 (2) Any student (or an appropriate officer of the Armed
14 Forces or official of the Department of Defense) who did not
15 give advance written or ~~verbal~~oral notice of service to the
16 appropriate official at the institution in accordance with
17 paragraph (c)(1) of this section may meet the notice requirement
18 by submitting, at the time the student seeks readmission, an
19 attestation to the institution that the student performed
20 service in the uniformed services that necessitated the
21 student's absence from the institution.

22 (e) Cumulative length of absence. For purposes of
23 paragraph (c)(1)(ii) of this section, a student's cumulative
24 length of absence from an institution does not include any
25 service--

26 (1) That is required, beyond five years, to complete an
27 initial period of obligated service;

28 (2) During which the student was unable to obtain orders
29 releasing the student from a period of service in the uniformed

1 services before the expiration of the five-year period and such
2 inability was through no fault of the student; or

3 (3) Performed by a member of the Armed Forces (including
4 the National Guard and Reserves) who is--

5 (i) Ordered to or retained on active duty under ~~section~~
6 ~~688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10,~~
7 ~~United States Code, or under section 331, 332, 359, 360, 367, or~~
8 ~~712 of title 14, United States Code;--~~

9 (A) 10 U.S.C. 688 (involuntary active duty by a military
10 retiree);

11 (B) 10 U.S.C. 12301(a) (involuntary active duty in
12 wartime);

13 (C) 10 U.S.C. 12301(g) (retention on active duty while in
14 captive status);

15 (D) 10 U.S.C. 12302 (involuntary active duty during a
16 national emergency for up to 24 months);

17 (E) 10 U.S.C. 12304 (involuntary active duty for an
18 operational mission for up to 270 days);

19 (F) 10 U.S.C. 12305 (involuntary retention on active duty
20 of a critical person during time of crisis or other specific
21 conditions);

22 (G) 14 U.S.C. 331 (involuntary active duty by retired
23 Coast Guard officer);

24 (H) 14 U.S.C. 332 (voluntary active duty by retired Coast
25 Guard officer);

26 (I) 14 U.S.C. 359 (involuntary active duty by retired
27 Coast Guard enlisted member);

28 (J) 14 U.S.C. 360 (voluntary active duty by retired Coast

1 Guard enlisted member);

2 (K) 14 U.S.C. 367 (involuntary retention of Coast Guard
3 enlisted member on active duty); and/or

4 (L) 14 U.S.C. 712 (involuntary active duty by Coast Guard
5 Reserve member for natural or man-made disasters);

6 (ii) Ordered to or retained on active duty (other than for
7 training) under any provision of law because of a war or
8 national emergency declared by the President or the Congress, as
9 determined by the Secretary concerned;

10 (iii) Ordered to active duty (other than for training) in
11 support, as determined by the Secretary concerned, of an
12 operational mission for which personnel have been ordered to
13 active duty under section 12304 of title 10, United States Code;

14 (iv) Ordered to active duty in support, as determined by
15 the Secretary concerned, of a critical mission or requirement of
16 the Armed Forces (including the National Guard or Reserve); or

17 (v) Called into Federal service as a member of the
18 National Guard under chapter 15 of title 10, United States Code,
19 or section 12406 of title 10, United States Code (i.e., called
20 to respond to an invasion, danger of invasion, rebellion, danger
21 of rebellion, insurrection, or the inability of the President
22 with regular forces to execute the laws of the United States).

23 (f) Notification of intent to reenroll. A student who
24 fails to apply for readmission within the periods described in
25 paragraph (c)(1)(iii) of this section does not automatically
26 forfeit eligibility for readmission to the institution, but is
27 subject to the institution's established leave of absence policy
28 and general practices.

1 (g) Documentation. (1) A student who submits an
2 application for readmission to an institution under paragraph
3 (c) (1) (iii) of this section shall provide to the institution
4 documentation to establish that--

5 (i) The student has not exceeded the service limitation in
6 paragraph (c) (1) (ii) of this section; and

7 (ii) The student's eligibility for readmission has not
8 been terminated due to an exception in paragraph (h) of this
9 section.

10 (2) (i) Documents that satisfy the requirements of
11 paragraph (g) (1) of this section include, but are not limited
12 to, the following:

13 (A) DD (Department of Defense) 214 Certificate of Release
14 or Discharge from Active Duty†.

15 (B) Copy of duty orders prepared by the facility where the
16 orders were fulfilled carrying an endorsement indicating
17 completion of the described service†.

18 (C) Letter from the commanding officer of a Personnel
19 Support Activity or someone of comparable authority†.

20 (D) Certificate of completion from military training
21 school†.

22 (E) Discharge certificate showing character of service†.

23 (F) Copy of extracts from payroll documents showing
24 periods of service†.

25 (G) Letter from National Disaster Medical System (NDMS)
26 Team Leader or Administrative Officer verifying dates and times
27 of NDMS training or Federal activation.

1 (ii) The types of documents that are necessary to
2 establish eligibility for readmission will vary from case to
3 case. Not all of these documents are available or necessary in
4 every instance to establish readmission eligibility.

5 (3) An institution may not delay or attempt to avoid a
6 readmission of a student under this section by demanding
7 documentation that does not exist, or is not readily available,
8 at the time of readmission.

9 (h) Termination of readmission eligibility. A student's
10 eligibility for readmission to an institution under this section
11 by reason of such student's service in the uniformed services
12 terminates upon the occurrence of any of the following events:

13 (1) A separation of such person from the Armed Forces
14 (including the National Guard and Reserves) with a dishonorable
15 or bad conduct discharge.

16 (2) A dismissal of ~~such person~~ a commissioned officer
17 permitted under section 1161(a) of title 10, United States Code
18 by sentence of a general court-martial; in commutation of a
19 sentence of a general court-martial; or, in time of war, by
20 order of the President, ~~or.~~

21 (3) A dropping of ~~such person~~ a commissioned officer from
22 the rolls pursuant to section 1161(b) of title 10, United States
23 Code due to absence without authority for at least three months;
24 separation by reason of a sentence to confinement adjudged by a
25 court-martial; or, a sentence to confinement in a Federal or
26 State penitentiary or correctional institution.

27 Statutory Language:

28 **SEC. 484C. READMISSION REQUIREMENTS FOR SERVICEMEMBERS.**

29 **(a) DEFINITION OF SERVICE IN THE UNIFORMED SERVICES.-**

1 In this section, the term 'service in the uniformed services'
2 means service (whether voluntary or involuntary) on active duty
3 in the Armed Forces, including such service by a member of the
4 National Guard or Reserve, for a period of more than 30 days
5 under a call or order to active duty of more than 30 days.

6 (b) DISCRIMINATION AGAINST STUDENTS WHO SERVE IN THE
7 UNIFORMED SERVICES PROHIBITED.—A person who is a member of,
8 applies to be a member of, performs, has performed, applies to
9 perform, or has an obligation to perform, service in the
10 uniformed services shall not be denied readmission to an
11 institution of higher education on the basis of that membership,
12 application for membership, performance of service, application
13 for service, or obligation.

14 (c) READMISSION PROCEDURES.—

15 (1) IN GENERAL.—Any student whose absence from an
16 institution of higher education is necessitated by reason of
17 service in the uniformed services shall be entitled to
18 readmission to the institution of higher education if—

19 (A) the student (or an appropriate officer of the Armed
20 Forces or official of the Department of Defense) gives advance
21 written or verbal notice of such service to the appropriate
22 official at the institution of higher education;

23 (B) the cumulative length of the absence and of all
24 previous absences from that institution of higher education by
25 reason of service in the uniformed services does not exceed five
26 years; and

27 (C) except as otherwise provided in this section, the
28 student submits a notification of intent to reenroll in the
29 institution of higher education in accordance with the
30 provisions of paragraph (4).

1 (2) EXCEPTIONS.—

2 (A) MILITARY NECESSITY.—No notice is required under
3 paragraph (1)(A) if the giving of such notice is precluded by
4 military necessity, such as—

5 (i) a mission, operation, exercise, or requirement that is
6 classified; or

7 (ii) a pending or ongoing mission, operation, exercise, or
8 requirement that may be compromised or otherwise adversely
9 affected by public knowledge.

10 (B) FAILURE TO GIVE ADVANCE NOTICE.—Any student (or an
11 appropriate officer of the Armed Forces or official of the
12 Department of Defense) who did not give advance written or
13 verbal notice of service to the appropriate official at the
14 institution of higher education in accordance with paragraph
15 (1)(A) may meet the notice requirement by submitting, at the
16 time the student seeks readmission, an attestation to the
17 student's institution of higher education that the student
18 performed service in the uniformed services that necessitated
19 the student's absence from the institution of higher education.

20 (3) APPLICABILITY.—This section shall apply to a student
21 who is absent from an institution of higher education by reason
22 of service in the uniformed services if such student's
23 cumulative period of service in the Armed Forces (including the
24 National Guard or Reserve), with respect to the institution of
25 higher education for which a student seeks readmission, does not
26 exceed five years, except that any such period of service shall
27 not include any service—

28 (A) that is required, beyond five years, to complete an
29 initial period of obligated service;

1 (B) during which such student was unable to obtain orders
2 releasing such student from a period of service in the uniformed
3 services before the expiration of such five year period and such
4 inability was through no fault of such student; or

5 (C) performed by a member of the Armed Forces (including
6 the National Guard and Reserves) who is—

7 (i) ordered to or retained on active duty under section
8 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10,
9 United States Code, or under section 331, 332, 359, 360, 367, or
10 712 of title 14, United States Code;

11 (ii) ordered to or retained on active duty (other than for
12 training) under any provision of law because of a war or
13 national emergency declared by the President or the Congress, as
14 determined by the Secretary concerned;

15 (iii) ordered to active duty (other than for training) in
16 support, as determined by the Secretary concerned, of an
17 operational mission for which personnel have been ordered to
18 active duty under section 12304 of title 10, United States Code;

19 (iv) ordered to active duty in support, as determined by
20 the Secretary concerned, of a critical mission or requirement of
21 the Armed Forces (including the National Guard or Reserve); or

22 (v) called into Federal service as a member of the National
23 Guard under chapter 15 of title 10, United States Code, or
24 section 12406 of title 10, United States Code.

25 (4) NOTIFICATION OF INTENT TO RETURN.—

26 (A) IN GENERAL.—Except as provided in subparagraph (B), a
27 student referred to in subsection (a) shall, upon the completion
28 of a period of service in the uniformed services, notify the
29 institution of higher education of the student's intent to

1 return to the institution not later than three years after the
2 completion of the period of service.

3 (B) HOSPITALIZATION OR CONVALESCENCE.—A student who is
4 hospitalized for or convalescing from an illness or injury
5 incurred in or aggravated during the performance of service in
6 the uniformed services shall notify the institution of higher
7 education of the student's intent to return to the institution
8 not later than two years after the end of the period that is
9 necessary for recovery from such illness or injury.

10 (C) SPECIAL RULE.—A student who fails to apply for
11 readmission within the period described in this section shall
12 not automatically forfeit such eligibility for readmission to
13 the institution of higher education, but shall be subject to the
14 institution of higher education's established leave of absence
15 policy and general practices.

16 (5) DOCUMENTATION.—

17 (A) IN GENERAL.—A student who submits an application for
18 readmission to an institution of higher education under this
19 section shall provide to the institution of higher education
20 documentation to establish that—

21 (i) the student has not exceeded the service limitations
22 established under this section; and

23 (ii) the student's eligibility for readmission has not been
24 terminated due to an exception in subsection (d).

25 (B) PROHIBITED DOCUMENTATION DEMANDS.—An institution of
26 higher education may not delay or attempt to avoid a readmission
27 of a student under this section by demanding documentation that
28 does not exist, or is not readily available, at the time of
29 readmission.

1 **(6) NO CHANGE IN ACADEMIC STATUS.**—A student who is
2 readmitted to an institution of higher education under this
3 section shall be readmitted with the same academic status as
4 such student had when such student last attended the institution
5 of higher education.

6 **(d) EXCEPTION FROM READMISSION ELIGIBILITY.**—A student's
7 eligibility for readmission to an institution of higher
8 education under this section by reason of such student's service
9 in the uniformed services terminates upon the occurrence of any
10 of the following events:

11 **(1)** A separation of such person from the Armed Forces (including
12 the National Guard and Reserves) with a dishonorable or bad
13 conduct discharge.

14 **(2)** A dismissal of such person permitted under section
15 1161(a) of title 10, United States Code.

16 **(3)** A dropping of such person from the rolls pursuant to
17 section 1161(b) of title 10, United States Code.

18

1 **Issue Paper #17**

2 **Origin:** HEOA

3 **Issue:** Institutional requirements for teach-outs/eligibility
4 and certification procedures-treatment of teach-outs

5 **Statutory cites:** Sections 487(f) and 498 of the HEA

6 **Regulatory cites:** §600.20 and §668.14

7 **DCL GEN-08-12 cite:** Pages 72 and 74

8 **Summary of issue:** Effective August 14, 2008, section 487(f) of
9 the HEA provides that, whenever the Secretary initiates an
10 action to limit, suspend, or terminate (LS or T) an
11 institution's participation in any Title IV program or initiates
12 an emergency action against an institution, the institution must
13 prepare a teach-out plan for submission to its accrediting
14 agency. The teach-out plan must be prepared in accordance with
15 section 496(c)(6) of the HEA [mistakenly cited as section
16 496(c)(4) in the HEA] and any applicable Title IV regulations or
17 accrediting agency standards. A "teach-out plan" is defined as
18 a written plan that provides for equitable treatment of students
19 if an institution ceases to operate before all students have
20 completed their program of study. Currently, the regulations
21 governing the Secretary's recognition of accrediting agencies
22 define a "teach-out agreement" as a written agreement between
23 institutions that provides for the equitable treatment of
24 students if one of those institutions stops offering an
25 educational program before all students enrolled in that program
26 have completed the program (§602.3). Consideration should be
27 given to developing one definition for all Title IV regulations.

28 Also effective August 14, 2008, section 498 of the HEA
29 provides that a location of a closed institution is eligible as
30 an additional location of another institution for the purpose of

1 conducting a teach-out if the teach-out is approved by the
2 institution's accrediting agency. The institution that conducts
3 the teachout under this provision is permitted to establish a
4 permanent additional location at the closed institution without
5 having to satisfy the requirements for additional locations in
6 sections 102(b)(1)(E) and 102(c)(1)(C) of the HEA--i.e., that a
7 proprietary institution or a postsecondary vocational
8 institution must have been in existence for two years to be
9 eligible--and without assuming the liabilities of the closed
10 institution.

11 Note: One of the four new accrediting agency operating
12 procedures added by the HEOA at section 496(c)(3) of the HEA
13 requires accrediting agencies to approve teach-out plans
14 submitted by institutions they accredit if the Department
15 notifies the agency of an action against an institution in
16 accordance with section 487(f) of the HEA; if the institution's
17 accreditation is withdrawn, terminated or suspended; or if the
18 institution intends to cease operations. This provision is
19 being negotiated by Team III--Accreditation.

20 **Updated information since 3/2-4 meetings:** Section 668.14 would
21 be amended to implement the requirement in section 487(f) of the
22 HEA. In addition to the requiring an institution to submit a
23 teach out plan (which would be defined in §600.2) to its
24 accrediting agency whenever the Secretary initiates an LS or T
25 or an emergency action against the institution, as required by
26 statute, an institution would be required to submit a teach out
27 plan when (1) the institution's accrediting agency acts to
28 withdraw, terminate, or suspend the accreditation of the
29 institution; or (2) the institution otherwise intends to cease
30 operations.

1 Section 600.32 would implement section 498(k) of the HEA to
2 provide that an institution that conducts a teach out for a
3 closed institution whenever the Secretary initiates an LS or T
4 or an emergency action against the institution may apply to have
5 that site approved as an additional location, if the teach out
6 plan was approved by the closed institution's accrediting
7 agency. If the Department approves the institution to add the
8 additional location, the "two-year rule" would not apply to the
9 additional location, and the institution would not assume the
10 liabilities of the closed institution. As a condition for
11 approval, the Department may require that payments from the
12 institution conducting the teach out to the owners of the closed
13 institution, or related parties, be used to pay any liabilities
14 owed by the closed institution.

15 **Updated information since 4/14-16 meetings:** Section
16 600.32(d)(2)(i)(C) would provide that, if the Department
17 approves an institution's application to add an additional
18 location, the institution would not assume the cohort default
19 rate of the closed institution, except that changes to the
20 regulations have been added to ensure that this provision is not
21 used by an institution to circumvent an undesirable cohort
22 default rate, or to attempt to transfer a site between related
23 parties without carrying forward the closed institution's
24 liabilities.

25 Changes have been made to §668.14(b)(26) to conform with
26 the proposed implementation of section 496(c)(3) of the HEA
27 (which requires accrediting agencies to require institutions to
28 submit a teach-out plan for approval upon the occurrence of
29 certain events) by the negotiating committee addressing
30 accreditation issues. Specifically, the following occurrence of
31 events were added to the list of events in §668.14(b)(26) that

1 would require an institution to submit a teach-out plan to its
2 accrediting agency:

- 3 • The institution's State licensing or authorizing agency
4 revokes the institution's license or legal authorization to
5 provide an educational program.
- 6 • The institution intends to close a location that provides
7 100 percent of at least one program.

8 **Tentative agreement:** No

9 Regulatory language:

10 §600.2 General definitions.

11 The following definitions apply to terms used in this part:

12 * * * * *

13 Teach-out plan: A written plan developed by an institution
14 that provides for the equitable treatment of students if an
15 institution, or an institutional location that provides 100
16 percent of at least one program, ceases to operate before all
17 students have completed their program of study, and may include,
18 if required by the institution's accrediting agency, a teach-out
19 agreement between institutions.

20 * * * * *

21 §600.32 Eligibility of additional locations.

22 (a) Except as provided in paragraphs (b) , ~~and~~ (c) , and (d)

23 of this section, to qualify as an eligible location, an

24 additional location of an eligible institution must satisfy the

25 applicable requirements of this section and §§600.4, 600.5,

26 600.6, 600.8, and 600.10.

1 (b) To qualify as an eligible location, an additional
2 location is not required to satisfy the two-year requirement of
3 §§600.5(a)(7) or 600.6(a)(6), unless—

4 (1) The location was a facility of another institution that
5 has closed or ceased to provide educational programs for a
6 reason other than a normal vacation period or a natural disaster
7 that directly affects the institution or the institution's
8 students;

9 (2) The applicant institution acquired, either directly
10 from the institution that closed or ceased to provide
11 educational programs, or through an intermediary, the assets at
12 the location; and

13 (3) The institution from which the applicant institution
14 acquired the assets of the location—

15 (i) Owes a liability for a violation of an HEA program
16 requirement; and

17 (ii) Is not making payments in accordance with an agreement
18 to repay that liability.

19 (c) Notwithstanding paragraph (b) of this section, an
20 additional location is not required to satisfy the two-year
21 requirement of §600.5(a)(7) or §600.6(a)(6) if the applicant
22 institution agrees—

23 (1) To be liable for all improperly expended or unspent
24 title IV, HEA program funds received by the institution that has
25 closed or ceased to provide educational programs;

26 (2) To be liable for all unpaid refunds owed to students
27 who received title IV, HEA program funds; and

28 (3) To abide by the policy of the institution that has
29 closed or ceased to provide educational programs regarding

1 refunds of institutional charges to students in effect before
2 the date of the acquisition of the assets of the additional
3 location for the students who were enrolled before that date.

4 (d) (1) An institution that conducts a teach-out at a site
5 of a closed institution may apply to have that site approved as
6 an additional location if--

7 (i) The closed institution ceased operations as result of
8 an action taken by the Secretary to limit, suspend, or terminate
9 the institution's participation under §600.41 or subpart G of
10 this part, or a result of an emergency action taken by the
11 Secretary under 34 CFR 668.83; and

12 (ii) The teach-out plan required under 34 CFR 668.14(b) (26)
13 is approved by the closed institution's accrediting agency.

14 (2) (i) An institution that conducts a teach-out and is
15 approved to add an additional location described in paragraph
16 (d) (1) of this section--

17 (A) ~~Is not required~~ Does not have to meet the two-year
18 requirement of §600.5(a) (7) or §600.6(a) (6) for the additional
19 location described in paragraph (d) (1) of this section; ~~and~~

20 (B) Is not ~~required~~ responsible for any to assume the
21 liabilities of the closed institution as ~~required by~~ provided
22 under paragraph (c) (1) and (c) (2) of this section if the
23 institutions are not related parties and there is no commonality
24 of ownership or management between the institutions, as
25 described in 34 CFR 668.188(b) and 34 CFR 668.207(b)-; and

26 (C) Will not have the default rate of the closed
27 institution included in the calculation of its default rate, as
28 would otherwise be required under 34 CFR 668.184 and 34 CFR
29 668.203, if the institutions are not related parties and there
30 is no commonality of ownership or management between the

1 institutions, as described in 34 CFR 668.188(b) and 34 CFR
2 668.207(b).

3 (ii) As a condition for approving an additional location
4 under paragraph (d)(1) of this section, the Secretary may
5 require that payments from the institution conducting the teach-
6 out to the owners or related parties of the closed institution,
7 are used to satisfy any liabilities owed by the closed
8 institution.

9 (de) For purposes of this section, an "additional
10 location" is a location of an institution that was not
11 designated as an eligible location in the eligibility
12 notification provided to an institution under §600.21.

13 §668.14 Program participation agreement.

14 * * * * *

15 (b) By entering into a program participation agreement, an
16 institution agrees that—

17 * * *

18 (26) The institution will submit a teach-out plan to its
19 accrediting agency in compliance with 34 CFR 602.24(c), and the
20 standards of the institution's accrediting agency upon the
21 occurrence of any of the following events:

22 (i) ~~In the event that~~ The Secretary initiates the limitation,
23 suspension, or termination of the participation of an
24 institution in any title IV, HEA program under 34 CFR 600.41 or
25 subpart G of this part or initiates an emergency action under
26 §668.83.

27 (ii) The institution's accrediting agency acts to
28 withdraw, terminate, or suspend the accreditation or
29 preaccreditation of the institution.

1 (iii) The institution's State licensing or authorizing
2 agency revokes the institution's license or legal authorization
3 to provide an educational program.

4 (iv) The institution intends to close a location that
5 provides 100 percent of at least one program.

6 (v) The institution otherwise intends to cease operations,
7 ~~the institution will submit a teach-out plan to its accrediting~~
8 ~~agency in compliance with 34 CFR 602.24(e), and the standards of~~
9 ~~the institution's accrediting agency.~~

10 * * * * *

11 **Statutory language:**

12 **Section 487. Program participation agreements.**

13 * * * * *

14 **(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS.—**

15 (1) IN GENERAL.—In the event the Secretary initiates the
16 limitation, suspension, or termination of the participation of
17 an institution of higher education in any program under this
18 title under the authority of subsection (c) (1) (F) or initiates
19 an emergency action under the authority of subsection (c) (1) (G)
20 and its prescribed regulations, the Secretary shall require that
21 institution to prepare a teach-out plan for submission to the
22 institution's accrediting agency or association in compliance
23 with section 496(c) (4) [should be 496(c) (6)], the Secretary's
24 regulations on teachout plans, and the standards of the
25 institution's accrediting agency or association.

26 **(2) TEACH-OUT PLAN DEFINED.—**In this subsection, the term
27 'teach-out plan' means a written plan that provides for the
28 equitable treatment of students if an institution of higher
29 education ceases to operate before all students have completed

1 their program of study, and may include, if required by the
2 institution's accrediting agency or association, an agreement
3 between institutions for such a teach-out plan.

4 **Section 498. Eligibility and certification procedures.**

5 * * * * *

6 (k) TREATMENT OF TEACH-OUTS AT ADDITIONAL LOCATIONS.-

7 (1) IN GENERAL.—A location of a closed institution of
8 higher education shall be eligible as an additional location of
9 an eligible institution of higher education, as defined pursuant
10 to regulations of the Secretary, for the purposes of a teachout
11 described in section 487(f), if such teach-out has been approved
12 by the institution's accrediting agency.

13 (2) SPECIAL RULE.—An institution of higher education that
14 conducts a teach-out through the establishment of an additional
15 location described in paragraph (1) shall be permitted to
16 establish a permanent additional location at a closed
17 institution and shall not be required—

18 (A) to meet the requirements of sections 102(b)(1)(E) and
19 102(c)(1)(C) for such additional location; or

20 (B) to assume the liabilities of the closed institution.

21 (for reference purposes)

22 **Section 496. Recognition of accrediting agency or association.**

23 * * * * *

24 (c) OPERATING PROCEDURES REQUIRED—No accrediting agency or
25 association may be recognized by the Secretary as a reliable
26 authority as to the quality of education or training offered by
27 an institution seeking to participate in the programs authorized
28 under this title, unless the agency or association—

1 * * *

2 (3) requires an institution to submit for approval to the
3 accrediting agency a teach-out plan upon the occurrence of any
4 of the following events:

5 (A) the Department notifies the accrediting agency of an
6 action against the institution pursuant to section 487(f);

7 (B) the accrediting agency acts to withdraw, terminate, or
8 suspend the accreditation of the institution; or

9 (C) the institution notifies the accrediting agency that
10 the institution intends to cease operations;

11 * * *

12 ~~(4)~~ (6) requires that teach-out agreements among
13 institutions are subject to the approval by the accrediting
14 agency or association consistent with standards promulgated by
15 such agency or association;

16

1 **Issue paper #18**

2 **Origin:** HEOA

3 **Issue:** Definition of baccalaureate "liberal arts" programs
4 offered by proprietary schools

5 **Statutory cites:** Section 102(b) of the HEA

6 **Regulatory cites:** §600.5

7 DCL GEN-08-12 cite: **Pages 23-24**

8 **Summary of issue:** Effective July 1, 2010, the definition of
9 "proprietary institution of higher education" is amended to add
10 institutions that provide a program leading to a baccalaureate
11 degree in liberal arts that the institution has provided since
12 January 1, 2009, so long as the institution has been accredited
13 by a recognized regional accreditation agency or organization
14 since October 1, 2007, or earlier.

15 As the language in section 102(b)(1)(A)(i) of the HEA is
16 not new, in Dear Colleague letter GEN-08-12, the Department
17 noted that this change does not affect the eligibility of
18 current programs or alter the method used by the Secretary in
19 determining the "recognized occupations" as required by section
20 102(b)(1)(A)(i) of the HEA.

21 Dear Colleague letter GEN-08-12 also noted that, pending
22 negotiated rulemaking, the Secretary will regard a program as
23 satisfying the "liberal arts" term of the statute if the
24 Secretary determines, and the institution's recognized regional
25 accreditation agency or organization affirms, that it is a
26 general instructional program in the liberal arts subjects, the
27 humanities disciplines, or the general curriculum, falling
28 within one or more of the following generally-accepted
29 instructional categories comprising such programs, but including

1 only instruction in regular programs, and excluding
2 independently-designed programs, individualized programs, and
3 unstructured studies:

- 4 • a program that is a structured combination of the arts,
5 biological and physical sciences, social sciences, and
6 humanities, emphasizing breadth of study;
- 7 • an undifferentiated program that includes instruction in the
8 general arts or general science;
- 9 • a program that focuses on combined studies and research in the
10 humanities subjects as distinguished from the social and
11 physical sciences, emphasizing languages, literatures, art,
12 music, philosophy and religion; and
- 13 • any single instructional program in liberal arts and sciences,
14 general studies and humanities not listed above.

15 **Updated information since 3/2-4 meetings:** Section 600.5 would
16 be amended to add to the definition of "proprietary institution
17 of higher education" institutions that provide a program leading
18 to a baccalaureate degree in liberal arts that the institution
19 has provided since January 1, 2009, so long as the institution
20 has been accredited by a recognized regional accreditation
21 agency or organization since October 1, 2007, or earlier. In
22 addition, a new paragraph (i) would be added to §600.5 to
23 include a definition of a "program leading to a baccalaureate
24 degree in liberal arts." The definition would require that the
25 institution's recognized regional accreditation agency or
26 organization determine that the program is a general
27 instructional program in the liberal arts subjects, the
28 humanities disciplines, or the general curriculum, falling
29 within one or more generally-accepted instructional categories
30 comprising such programs. The categories are from the U.S.

1 Department of Education's National Center for Education
2 Statistics' (NCES) Classification of Instructional Programs
3 (CIP), the federal government statistical standard on
4 instructional program classifications. Specifically, the
5 instructional categories are from the description of CIP 24,
6 Liberal Arts and Sciences, General Studies and Humanities,
7 except that it excludes independently-designed programs,
8 individualized programs, and unstructured studies.

9 **Updated information since 4/14-16 meetings:** None

10 **Tentative agreement:** Yes

11 **Regulatory language:**

12 §600.5 Proprietary institution of higher education.

13 (a) A proprietary institution of higher education is an
14 educational institution that—

15 (1) Is not a public or private nonprofit educational
16 institution;

17 (2) Is in a State;

18 (3) Admits as regular students only persons who—

19 (i) Have a high school diploma;

20 (ii) Have the recognized equivalent of a high school
21 diploma; or

22 (iii) Are beyond the age of compulsory school attendance
23 in the State in which the institution is physically located;

24 (4) Is legally authorized to provide an educational
25 program beyond secondary education in the State in which the
26 institution is physically located;

1 (5) (i) Provides an eligible program of training, as
2 defined in 34 CFR 668.8, to prepare students for gainful
3 employment in a recognized occupation; or

4 (ii) (A) Provides a program leading to a baccalaureate
5 degree in liberal arts, as defined in paragraph (i) of this
6 section, and has provided that program since January 1, 2009;
7 and

8 (B) Is accredited by a recognized regional accrediting
9 agency or association, and has continuously held such
10 accreditation since October 1, 2007, or earlier;

11 * * * * *

12 (i) For purposes of this section, a "program leading to a
13 baccalaureate degree in liberal arts" is a program that the
14 institution's recognized regional accreditation agency or
15 organization determines, is a general instructional program in
16 the liberal arts subjects, the humanities disciplines, or the
17 general curriculum, falling within one or more of the following
18 generally-accepted instructional categories comprising such
19 programs, but including only instruction in regular programs,
20 and excluding independently-designed programs, individualized
21 programs, and unstructured studies:

22 (1) A program that is a structured combination of the
23 arts, biological and physical sciences, social sciences, and
24 humanities, emphasizing breadth of study.

25 (2) An undifferentiated program that includes instruction
26 in the general arts or general science.

27 (3) A program that focuses on combined studies and
28 research in the humanities subjects as distinguished from the
29 social and physical sciences, emphasizing languages,
30 literatures, art, music, philosophy and religion.

1 (4) Any single instructional program in liberal arts and
2 sciences, general studies and humanities not listed~~above in~~
3 paragraph (i) (1) through (i) (3) of this section.

4 **Statutory Language:**

5 **Section 102. Definition of institution of higher education for**
6 **purposes of Title IV programs.**

7 * * * * *

8 (b) PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—

9 (1) PRINCIPAL CRITERIA.—For the purpose of this section,
10 the term ``proprietary institution of higher education'' means a
11 school that—

12 ~~(A) provides an eligible program of training to prepare~~
13 ~~students for gainful employment in a recognized occupation;~~

14 (A) (i) provides an eligible program of training to prepare
15 students for gainful employment in a recognized occupation; or

16 (ii) (I) provides a program leading to a baccalaureate
17 degree in liberal arts, and has provided such a program since
18 January 1, 2009; and

19 (II) is accredited by a recognized regional accrediting
20 agency or association, and has continuously held such
21 accreditation since October 1, 2007, or earlier;

1 **Issue Paper #19**

2 **Origin:** HEOA

3 **Issue:** Peer-to-peer file sharing/copyrighted material

4 **Statutory cites:** Section 485(a) and 487 of the HEA

5 **Regulatory cites:** §668.14 and §668.43

6 DCL GEN-08-12 cite: **Pages 72 and 95**

7 **Summary of issue:** Effective August 14, 2008, the HEOA adds a
8 new requirement to section 487 of the HEA (Program Participation
9 Agreement) under which an institution must certify that it has
10 developed plans to effectively combat the unauthorized
11 distribution of copyrighted material (including through the use
12 of a variety of technology-based deterrents) and will, to the
13 extent practicable, offer alternatives to illegal downloading or
14 peer-to-peer distribution of intellectual property, as
15 determined by the institution in consultation with the chief
16 technology officer or other designated officer of the
17 institution.

18 In addition, as part of the required information an
19 institution must make available to prospective and enrolled
20 students the HEOA adds new subparagraph (P) to section 485(a)(1)
21 of the HEA to require a description of institutional policies
22 and sanctions related to copyright infringement. This
23 description includes (1) an annual disclosure that explicitly
24 informs students that unauthorized distribution of copyrighted
25 material, including peer-to-peer file sharing, may subject the
26 students to civil and criminal liabilities; (2) a summary of the
27 penalties for violation of Federal copyright laws; and (3) the
28 institution's policies with respect to unauthorized peer-to-peer
29 file sharing, including disciplinary actions that are taken
30 against students who engage in unauthorized distribution of

1 copyrighted materials using the institution's information
2 technology system. This provision is also effective August 14,
3 2008.

4 **Updated information since 3/2-4 meetings:**

5 Generally, in drafting these proposed regulations, the
6 Department sought to stay as close as possible to the actual
7 language of the statute. In recognition of the diversity among
8 institutions and evolving technology, we chose not to mandate in
9 regulation the use of specific technologies or measures. At the
10 same time, we sought to give meaning to the statute in a way
11 that provides clarity so that institutions understand what is
12 expected of them to comply with these provisions.

13 ***Program participation agreement***

14 Section 668.14(b)(27)(i) would implement section
15 487(a)(29)(A) of the HEA to require an institution, as a
16 condition of participation in a Title IV program, to agree that
17 it has developed and implemented plans to effectively combat the
18 unauthorized distribution of copyrighted material by users of
19 the institution's network without unduly interfering with the
20 educational and research use of the network.

21 The proposed language reflects general agreement by the
22 subcommittee that the plan should include the use of technology-
23 based deterrents, an educational component, a description of the
24 institution's procedures for handling copyright infringement,
25 and a required periodic review of the plan. Institutions would
26 not be required to use specific types of technology-based
27 deterrents. To assist with implementation, the four categories
28 of technology-based deterrents listed in the conference report
29 to the HEOA could be listed in the preamble to the regulations.
30 Institutions would be required to demonstrate the effectiveness

1 of their plan by using measureable criteria. Institutions would
2 be allowed to determine the most appropriate measure or
3 measures.

4 Section 668.14(b)(27)(ii) would implement section
5 487(a)(29)(B) of the HEA, requiring that institutions, in
6 consultation with the chief technology officer or other
7 designated officer of the institution, to the extent
8 practicable, offer legal alternatives to illegal downloading or
9 otherwise acquiring copyrighted material. The proposed language
10 also reflects general agreement among the subcommittee members
11 that institutions (1) be required to periodically review the
12 legal alternatives for downloading or otherwise acquiring
13 copyrighted material and (2) provide the results of the review.

14 ***Consumer information***

15 The Department is proposing to implement section
16 485(a)(1)(P) of the HEA by using, as much as practicable, the
17 existing framework and definitions found in current regulations.
18 As the statute requires that most institutional information be
19 made readily available upon request to prospective and enrolled
20 students, rather than provided to them on a one-to-one basis,
21 information regarding institutional policies and sanctions
22 related to copyright infringement would be handled in the same
23 manner (i.e., included in the list of institutional information
24 provided upon request pursuant to §668.43). This information
25 would be required to (1) explicitly inform enrolled and
26 prospective students that unauthorized distribution of
27 copyrighted material, including peer-to-peer file sharing, may
28 subject a student to civil and criminal liabilities; (2) include
29 a summary of the penalties for violation of Federal copyright
30 laws; and (3) delineate the institution's policies with respect
31 to unauthorized peer-to-peer file sharing, including

1 disciplinary actions that are taken against students who engage
2 in illegal downloading or unauthorized distribution of
3 copyrighted materials using the institution's information
4 technology system. As the statute does not require disclosure
5 of this information to employees of the institution, this would
6 not be mandated in the regulations. However, institutions could
7 choose to make such information available to employees and the
8 general public.

9 As current §668.41(c) requires an institution to provide to
10 enrolled students an annual notice containing a list and brief
11 description of the consumer information it must disclose and the
12 procedures for obtaining this consumer information, an
13 institution would be required to add to this list the fact that
14 it must make readily available information regarding
15 institutional policies and sanctions related to copyright
16 infringement. Per the current definition of "notice" in
17 §668.41(a), institutions must provide this annual notice on a
18 one-to-one basis through a direct individual notice to each
19 enrolled student. This notice must be made through an
20 appropriate mailing or publication, including direct mailing
21 through the U.S. Postal Service, campus mail or electronic mail.
22 Posting on Internet or Intranet websites does not constitute
23 notice. If the institution discloses the consumer information
24 by posting the information on a website, it must include in the
25 notice the exact electronic address at which the information is
26 posted, and a statement that the institution will provide a
27 paper copy of the information on request.

28 The current definition of "prospective student" in
29 §668.41(a) would be used—i.e., an individual who has contacted
30 an eligible institution requesting information concerning
31 admission to that institution.

1 **Updated information since 4/14-16 meetings:** The changes to the
2 proposed regulatory language reflect the proposal that was
3 presented to the full committee by the Peer-to-Peer
4 subcommittee, on which tentative agreement was reached by the
5 full committee. The changes:

- 6 • Clarify that an institution's plans must include one or
7 more technology-based deterrents;
- 8 • Clarify that an institution may comply with the requirement
9 that its plans include mechanisms for educating and
10 informing its community about appropriate versus
11 inappropriate use of copyrighted material by complying with
12 the consumer information provisions related to copyright
13 infringement in §668.43(a)(10), but may choose to do more;
- 14 • Replace the term, "copyright infringement" with the term
15 "unauthorized distribution of copyrighted material" for
16 consistency;
- 17 • Replace the requirement that an institution's plans include
18 procedures for periodically reviewing the effectiveness of
19 the plans based on measureable criteria, with the
20 requirement that an institution's plan include procedures
21 for periodically reviewing the effectiveness of the plans
22 using relevant assessment criteria;
- 23 • Remove the examples of measureable criteria and state that
24 no particular technology measures are favored or required
25 for inclusion in an institution's plans, and that each
26 institution retains the authority to determine what its
27 particular plans for compliance will be, including those
28 that prohibit content monitoring; and

- 1 • Remove the requirement that an institution make available
2 to its employees the results of its periodic review of
3 legal alternatives for downloading or otherwise acquiring
4 copyrighted material.

5 As a part of this agreement, it was acknowledged that
6 institutions will need guidance on various aspects of these
7 regulations, including deterrent technologies, the components of
8 effective plans, mechanisms for educating and informing
9 communities and so forth. The Department has agreed to address
10 various of these issues in the preamble to the regulations. The
11 entertainment industry and higher education community have
12 agreed to work collaboratively to provide further guidance in
13 the future.

14 **Tentative agreement:** Yes

15 **Regulatory language:**

16 §668.14 Program participation agreement.

17 * * * * *

18 (b) By entering into a program participation agreement, an
19 institution agrees that—

20 * * *

21 (3027) The institution--

22 (i) Has developed and implemented written plans to
23 effectively combat the unauthorized distribution of copyrighted
24 material by users of the institution's network, without unduly
25 interfering with educational and research use of the network,
26 that include--

27 (A) The use of one or more technology-based deterrents;

1 (B) Mechanisms for educating and informing its community
2 about appropriate versus inappropriate use of copyrighted
3 material, including that described in §668.43(a)(10);

4 (C) Procedures for handling unauthorized distribution of
5 copyrighted material—copyright infringements, including
6 disciplinary procedures; and

7 (D) Procedures for periodically reviewing the
8 effectiveness of the plans to combat the unauthorized
9 distribution of copyrighted materials by users of the
10 institution's network—based on measurable using relevant
11 assessment criteria. No particular technology measures are
12 avored or required for inclusion in an institution's plans, and
13 each institution retains the authority to determine what its
14 particular plans for compliance with paragraph (b)(30) of this
15 section will be, including those that prohibit content
16 monitoring—which may include the number of copyright
17 infringement notices received and the rate of recidivism.

18 (ii) Will, in consultation with the chief technology
19 officer or other designated officer of the institution--

20 (A) Periodically review the legal alternatives for
21 downloading or otherwise acquiring copyrighted material;

22 (B) Make available the results of the review in paragraph
23 (b)(30~~27~~)(ii)(A) to its students, and employees through a Web
24 site and/or [We are not allowed to include slashes in regulatory
25 text.] other means; and

26 (C) To the extent practicable, offer legal alternatives
27 for downloading or otherwise acquiring copyrighted material, as
28 determined by the institution.

29 * * * * *

1 §668.43 Institutional information.

2 (a) Institutional information that the institution must
3 make readily available upon request to enrolled and prospective
4 students under this subpart includes, but is not limited to—

5 * * *

6 (8) The titles of persons designated under §668.44 and
7 information regarding how and where those persons may be
8 contacted; and

9 (9) A statement that a student's enrollment in a program
10 of study abroad approved for credit by the home institution may
11 be considered enrollment at the home institution for the purpose
12 of applying for assistance under the title IV, HEA programs; ;
13 and

14 (10) Institutional policies and sanctions related to
15 copyright infringement, including--

16 (i) A statement that explicitly informs ~~the~~ its students
17 that unauthorized distribution of copyrighted material,
18 including unauthorized peer-to-peer file sharing, may subject
19 the students to civil and criminal liabilities;

20 (ii) A summary of the penalties for violation of Federal
21 copyright laws; and

22 (iii) A description of the institution's policies with
23 respect to unauthorized peer-to-peer file sharing, including
24 disciplinary actions that are taken against students who engage
25 in illegal downloading or unauthorized distribution of
26 copyrighted materials using the institution's information
27 technology system.

28 **Statutory language:**

29 **SEC. 485. Institutional and Financial Assistance for Students.**

1 **(a)** INFORMATION DISSEMINATION ACTIVITIES.—

2 **(1)** Each eligible institution participating in any program
3 under this title shall carry out information dissemination
4 activities for prospective and enrolled students (including
5 those attending or planning to attend less than full time)
6 regarding the institution and all financial assistance under
7 this title. The information required by this section shall be
8 produced and be made readily available upon request, through
9 appropriate publications, mailings, and electronic media, to an
10 enrolled student and to any prospective student. Each eligible
11 institution shall, on an annual basis, provide to all enrolled
12 students a list of the information that is required to be
13 provided by institutions to students by this section and section
14 444 of the General Education Provisions Act (also referred to as
15 the Family Educational Rights and Privacy Act of 1974), together
16 with a statement of the procedures required to obtain such
17 information. The information required by this section shall
18 accurately describe—

19 * * *

20 **(P)** institutional policies and sanctions related to
21 copyright infringement, including—

22 **(i)** an annual disclosure that explicitly informs students
23 that unauthorized distribution of copyrighted material,
24 including unauthorized peer-to-peer file sharing, may subject
25 the students to civil and criminal liabilities;

26 **(ii)** a summary of the penalties for violation of Federal
27 copyright laws; and

28 **(iii)** a description of the institution's policies with
29 respect to unauthorized peer-to-peer file sharing, including
30 disciplinary actions that are taken against students who engage

1 in unauthorized distribution of copyrighted materials using the
2 institution's information technology system;

3 **Section 487. Program participation agreements.**

4 * * * * *

5 (a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order
6 to be an eligible institution for the purposes of any program
7 authorized under this title, an institution must be an
8 institution of higher education or an eligible institution (as
9 that term is defined for the purpose of that program) and shall,
10 except with respect to a program under subpart 4 of part A,
11 enter into a program participation agreement with the Secretary.
12 The agreement shall condition the initial and continuing
13 eligibility of an institution to participate in a program upon
14 compliance with the following requirements:

15 * * *

16 (29) The institution certifies that the institution—

17 (A) has developed plans to effectively combat the
18 unauthorized distribution of copyrighted material, including
19 through the use of a variety of technology-based deterrents; and

20 (B) will, to the extent practicable, offer alternatives to
21 illegal downloading or peer-to-peer distribution of intellectual
22 property, as determined by the institution in consultation with
23 the chief technology officer or other designated officer of the
24 institution.

25

1 **Issue Paper #20**

2 **Origin:** HEOA

3 **Issue:** Institutional plans for improving the academic program

4 **Statutory cites:** Section 485(a) of the HEA

5 **Regulatory cites:** §668.43

6 **DCL GEN-08-12 cite:** Page 95

7 **Summary of issue:** As part of the required information an
8 institution must make available to prospective and enrolled
9 students, the HEOA adds to the existing description of the
10 academic program any plans the institution has for improving the
11 academic program. This provision was effective August 14, 2008.

12 **Updated information since 3/2-4 meetings:** Section 668.43 would
13 be amended to add to the institutional information that an
14 institution must make readily available upon request to enrolled
15 and prospective students any plans by the institution for
16 improving the academic program of the institution.

17 **Updated information since 4/14-16 meetings:** Preamble language
18 will state that an institution determines what a "plan" is,
19 including when a plan becomes a plan.

20 **Tentative agreement:** Yes

21 **Regulatory language:**

22 §668.43 Institutional information.

23 (a) Institutional information that the institution must
24 make readily available upon request to enrolled and prospective
25 students under this subpart includes, but is not limited to—

26 * * *

27 (5) The academic program of the institution, including—

1 (i) The current degree programs and other educational and
2 training programs;

3 (ii) The instructional, laboratory, and other physical
4 facilities which relate to the academic program; ~~and~~

5 (iii) The institution's faculty and other instructional
6 personnel; and

7 (iv) Any plans by the institution for improving the
8 academic program of the institution;

9 * * * * *

10 **Statutory Language:**

11 **SEC. 485. Institutional and Financial Assistance for Students.**

12 (a) INFORMATION DISSEMINATION ACTIVITIES.—

13 (1) Each eligible institution participating in any program
14 under this title shall carry out information dissemination
15 activities for prospective and enrolled students (including
16 those attending or planning to attend less than full time)
17 regarding the institution and all financial assistance under
18 this title. The information required by this section shall be
19 produced and be made readily available upon request, through
20 appropriate publications, mailings, and electronic media, to an
21 enrolled student and to any prospective student. Each eligible
22 institution shall, on an annual basis, provide to all enrolled
23 students a list of the information that is required to be
24 provided by institutions to students by this section and section
25 444 of the General Education Provisions Act (also referred to as
26 the Family Educational Rights and Privacy Act of 1974), together
27 with a statement of the procedures required to obtain such
28 information. The information required by this section shall
29 accurately describe—

1 * * *

2 (G) the academic program of the institution, including (i)
3 the current degree programs and other educational and training
4 programs, (ii) the instructional, laboratory, and other physical
5 plant facilities which relate to the academic ~~program, and~~
6 program, (iii) the faculty and other instructional personnel,
7 and (iv) any plans by the institution for improving the academic
8 program of the institution;
9

1 **Issue Paper # 21**

2 **Origin:** HEOA

3 **Issue:** Leveraging Educational Assistance Partnership (LEAP)
4 Program Non-Federal Share

5 **Statutory cites:** Section 415C(b) (10) of the HEA

6 **Regulatory cites:** §692.10

7 DCL GEN-08-12 cite: **None**

8 **Summary of issue:** The HEA as amended by the HEOA provides that
9 the non-Federal share of the amount of student grants or work-
10 study jobs under the LEAP Program must be from State funds for
11 the program and no longer requires the non-Federal share to come
12 from a direct appropriation of State funds.

13 **Updated information since 4/14-16 meetings:**

14 The amendments to §692.10 would delete references to State funds
15 being appropriated funds and would make technical corrections to
16 reflect that multiple programs are funded under this part.

17 **Tentative agreement:** Yes.

18 **Regulatory Language:**

19 §692.10 How does the Secretary allot funds to the States?

1 (a) (1) The Secretary allots to each State participating in
2 the LEAP program an amount which bears the same ratio to the
3 Federal LEAP funds appropriated as the number of students in
4 that State who are "deemed eligible" to participate in the
5 State's LEAP program bears to the total number of students in
6 all States who are "deemed eligible" to participate in the LEAP
7 program, except that no State may receive less than it received
8 in fiscal year 1979 ~~for the programs under this part.~~

9 (2) For the programs under this part, ~~if~~ the Federal ~~LEAP~~
10 funds appropriated for a fiscal year are not sufficient to allot
11 to each State the amount of Federal ~~LEAP~~-funds it received in
12 fiscal year 1979, the Secretary allots to each State an amount
13 which bears the same ratio to the amount of Federal ~~LEAP~~-funds
14 appropriated as the amount of Federal ~~LEAP~~ funds that State
15 received in fiscal year 1979 bears to the amount of Federal ~~LEAP~~
16 funds all States received in fiscal year 1979 for the programs
17 under this part.

18 (b) For the purpose of paragraph (a) (1) of this section,
19 the Secretary determines the number of students "deemed
20 eligible" to participate in a State's LEAP Program by dividing
21 the amount of that State's LEAP expenditures, including both its
22 Federal allotment and the State-~~appropriated~~ funds matching the
23 allotment, by the average grant award per student of all
24 participating States. The Secretary determines the "average
25 grant award per student" by dividing the total number of student
26 recipients for all States into the total amount of LEAP
27 expenditures for all States, including both the Federal
28 allotments and the State-~~appropriated~~ funds matching those
29 allotments. In making this determination, the Secretary uses
30 the most current available data reported by each State.

31

1 **Statutory Language:**

2 (10) For any academic year beginning after June 30, 1987,
3 provides the non-Federal share of the amount of student grants
4 or work-study jobs under this subpart through a direct
5 appropriation of state funds for the program under this subpart;
6 and

7

1 **Issue Paper # 22**

2 **Origin:** HEOA

3 **Issue:** Notification to Students of Source of LEAP Grant
4 Funding

5 **Statutory cites:** Section 415C(b) (11) of the HEA

6 **Regulatory cites:** §692.21

7 **DCL GEN-08-12 cite:** Page 110

8 Summary of issue: **The HEA as amended by the HEOA requires the**
9 **State program to notify eligible students that grants are (1)**
10 **LEAP Grants and (2) are funded by the Federal Government, the**
11 **State, and, for LEAP Grants to students made under GAP, other**
12 **contributing partners.**

13 **Updated information since 3/14-16 meetings:**

14 The draft proposed regulations generally reflect the statutory
15 language. The Department is committed to discussing in the
16 preamble that the intent is to provide maximum flexibility to
17 States in implementing this provision.

18 **Tentative agreement:** Yes.

19 **Regulatory Language:**

20 §692.21 What requirements must be met by a State program?

21 To receive a payment under the LEAP Program for any fiscal
22 year, a State must have a program that—

23 (a) Is administered by a single State agency;

24 (b) Provides assistance only to students who meet the
25 eligibility requirements in §692.40;

26 (c) Provides that assistance under this program to a full-
27 time student will not be more than **the lesser of \$12,500 ~~5,000~~**

1 or the student's cost of attendance under section 472 of the HEA
2 for each academic year;

3 (d) Provides for the selection of students to receive
4 assistance on the basis of substantial financial need determined
5 annually by the State on the basis of standards that the State
6 establishes and the Secretary approves;

7 (e) Provides that no student or parent shall be charged a
8 fee that is payable to an organization other than the State for
9 the purpose of collecting data to make a determination of
10 financial need in accordance with paragraph (d) of this section;

11 (f) Provides that all public or private nonprofit
12 institutions of higher education and all postsecondary
13 vocational institutions in the State are eligible to participate
14 unless that participation is in violation of-

15 (1) The constitution of the State; or

16 (2) A State statute that was enacted before October 1,
17 1978;

18 (g) Provides that, if a State awards grants to independent
19 students or to students who are less-than-full-time students
20 enrolled in an institution, a reasonable portion of the State's
21 allocation must be awarded to those students;

22 (h) Provides that-

23 (1) The State will pay an amount for grants and work-study
24 jobs under this part for each fiscal year that is not less than
25 the payment to the State under this part for that fiscal year;
26 and

27 (2) The amount that the State expends during a fiscal year
28 for grants and work-study jobs under the LEAP Program represents
29 an additional amount for grants and work-study jobs for students

1 attending institutions over the amount expended by the State for
2 those activities during the fiscal year two years prior to the
3 fiscal year in which the State first received funds under the
4 LEAP Program;

5 (i) Provides for State expenditures under the State program
6 of an amount that is not less than--

7 (1) The average annual aggregate expenditures for the
8 preceding three fiscal years; or

9 (2) The average annual expenditure per full-time equivalent
10 student for those years;

11 (j) Provides that, to the extent practicable, the
12 proportion of the funds awarded to independent students in the
13 LEAP Program shall be the same proportion of funds awarded to
14 independent students as is in the State program or programs of
15 which the State's LEAP Program is a part; ~~and~~

16 ~~(k) Notifies eligible students that the grants are--~~

17 ~~(1) Leveraging Educational Assistance Partnership Grants;~~

18 ~~and~~

19 ~~(2) Funded by the Federal Government, the State, and, where~~
20 ~~applicable, other contributing partners; and~~

21 ~~(k1)~~ Provides for reports to the Secretary that are
22 necessary to carry out the Secretary's functions under the LEAP
23 Program.

24 Statutory Language:

25 (11) provides notification to eligible students that such
26 grants are--

27 (A) Leveraging Educational Assistance Partnership Grants;

28 and

1 (B) funded by the Federal Government, the State, and, where
2 applicable, other contributing partners.

3

1 **Issue Paper #23**

2 **Origin:** HEOA

3 **Issue:** GAP Program Activities: Partnerships

4 **Statutory cites:** Section 415E(c)(4) and (d) of the HEA

5 **Regulatory cites:** §§692.94, 692.100, 692.101, and 692.111

6 **DCL GEN-08-12 cite:** Page 113

7 **Summary of issue:**

8 ***Partnership***

9 Each State receiving an allotment must use the funds to
10 establish a partnership to award LEAP Grants under GAP to
11 eligible low-income students in order to increase the amount of
12 financial assistance these students receive under these programs
13 for undergraduate education expenses.

14 ***Roles of Partners***

15 State agency

16 A State agency that is in a partnership receiving a GAP
17 allotment serves as the primary administrative unit for the
18 partnership. The State agency:

- 19 • provides or coordinates non-Federal share funds and
20 coordinates activities among partners;
- 21 • encourages each institution of higher education in the
22 State to participate in the partnership;
- 23 • makes determinations and early notifications of
24 assistance;
- 25 • annually reports to the Secretary on the partnership's
26 progress in meeting the purpose of GAP; and

- 1 • may provide early information and intervention,
2 mentoring, or outreach programs.

3 Degree-granting institution of higher education

4 An institution in a partnership:

- 5 • must recruit and admit participating qualified students
6 and provide such additional institutional grant aid to
7 participating students as agreed to with the State
8 agency;
- 9 • must provide support services to students who receive
10 LEAP Grants under GAP and are enrolled at the
11 institution;
- 12 • must assist the State in the identification of eligible
13 students and the dissemination of early notifications of
14 assistance as agreed to with the State agency; and
- 15 • may provide funding for early information and
16 intervention, mentoring, or outreach programs or provide
17 such services directly.

18 Early intervention programs

19 An early information and intervention, mentoring, or
20 outreach program that is in a partnership must provide direct
21 services, support, and information to participating students.

22 Philanthropic organization or private corporation

23 A philanthropic organization or private corporation that is
24 in a partnership must provide funds for LEAP Grants under GAP
25 for participating students or provide funds or support for early
26 information and intervention, mentoring, or outreach programs.

27 **Updated information since 4/14-16 meetings:**

28 See attachment: SLEAP and GAP Draft Regulations.

1 Tentative agreement: Yes.

2

3 Regulatory Language:

4 See §692.94 on page 2 of Appendix A.

5 See §692.100 on page 2-3 of Appendix A.

6 See §692.101 on page 4 of Appendix A.

7 See §692.111 on page 5-7 of Appendix A.

8 Statutory Language:

9 (c) * * *

10 * * * * *

11 (4) ROLES OF PARTNERS.—

12 (A) STATE AGENCY.—A State agency that is in a partnership
13 receiving an allotment under this section—

14 (i) shall—

15 (I) serve as the primary administrative unit for the
16 partnership;

17 (II) provide or coordinate non-Federal share funds, and
18 coordinate activities among partners;

19 (III) encourage each institution of higher education in the
20 State to participate in the partnership;

21 (IV) make determinations and early notifications of
22 assistance as described under subsection (d) (2); and

23 (V) annually report to the Secretary on the partnership's
24 progress in meeting the purpose of this section; and

25 (ii) may provide early information and intervention,
26 mentoring, or outreach programs.

1 (B) DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION.—A
2 degree-granting institution of higher education that is in a
3 partnership receiving an allotment under this section—

4 (i) shall—

5 (I) recruit and admit participating qualified students and
6 provide such additional institutional grant aid to participating
7 students as agreed to with the State agency;

8 (II) provide support services to students who receive
9 grants for access and persistence under this section and are
10 enrolled at such institution; and

11 (III) assist the State in the identification of eligible
12 students and the dissemination of early notifications of
13 assistance as agreed to with the State agency; and

14 (ii) may provide funding for early information and
15 intervention, mentoring, or outreach programs or provide such
16 services directly.

17 (C) PROGRAMS.—An early information and intervention,
18 mentoring, or outreach program that is in a partnership
19 receiving an allotment under this section shall provide direct
20 services, support, and information to participating students.

21 (D) PHILANTHROPIC ORGANIZATION OR PRIVATE CORPORATION.— A
22 philanthropic organization or private corporation that is in a
23 partnership receiving an allotment under this section shall
24 provide funds for grants for access and persistence for
25 participating students, or provide funds or support for early
26 information and intervention, mentoring, or outreach programs.

27 (d) AUTHORIZED ACTIVITIES.—

28 (1) IN GENERAL.—

1 (A) ESTABLISHMENT OF PARTNERSHIP.—Each State receiving an
2 allotment under this section shall use the funds to establish a
3 partnership to award grants for access and persistence to
4 eligible low-income students in order to increase the amount of
5 financial assistance such students receive under this subpart
6 for undergraduate education expenses.

7

1 **Issue paper #24**

2 **Origin:** HEOA

3 **Issue:** GAP Program Activities: Awards

4 **Statutory cites:** Section 415E(d) of the HEA

5 **Regulatory cites:** §§692.111(b) and 692.120

6 **DCL GEN-08-12 cite:** Page 114

7 Summary of issue:

8 **LEAP Grant under GAP amount**

9 **The amount of a LEAP Grant under GAP awarded by a State to**
10 **a student must be not less than the average undergraduate**
11 **tuition and mandatory fees at the public institutions of higher**
12 **education in the State where the student resides that are of the**
13 **same type of institution as the institution of higher education**
14 **the student attends minus other Federal and State aid the**
15 **student receives.**

16 **Institutions of higher education**

17 A State receiving a GAP allotment may restrict the use of
18 LEAP Grants under GAP by awarding the grants only to students
19 attending institutions of higher education that are
20 participating in the partnership. If a State provides LEAP
21 Grants not awarded under GAP to students attending institutions
22 of higher education located in another State, grants awarded
23 under GAP may be used at institutions of higher education
24 located in another State.

25 ***Student eligibility***

26 A student must meet one of the following:

- 1 • The student meets at least two of the following criteria,
2 with priority given to students meeting all of the
3 following criteria:
- 4 o has an EFC equal to zero, as determined under the
5 Title IV need analysis, or a comparable alternative
6 based upon the State's approved criteria for LEAP;
 - 7 o qualifies for the State's maximum undergraduate award
8 for LEAP; or
 - 9 o is participating in, or has participated in, a
10 Federal, State, institutional, or community early
11 information and intervention, mentoring, or outreach
12 program, as recognized by the State agency
13 administering LEAP and GAP.
- 14 • The student is receiving, or has received, a LEAP Grant
15 under GAP, and is compliant with the requirements for the
16 duration of an award.

17 **Grant award**

18 Once a student, including those students who have received
19 an early notification from the State, applies for admission to
20 an institution that is a partner in the partnership, files a
21 FAFSA and any related State form, and is determined by the State
22 to meet the student eligibility requirements in the prior
23 section, the State must issue the student a preliminary award
24 certificate for a LEAP Grant under GAP with estimated award
25 amounts and inform the student that payment of the grant award
26 amounts is subject to certification of enrollment and award
27 eligibility by the student's institution of higher education.

28 **Duration of an award**

1 An eligible student who receives a LEAP Grant under GAP
2 receives an award for each year of the student's undergraduate
3 education in which the student remains eligible for assistance
4 under Title IV, including meeting the Title IV satisfactory
5 academic progress standards, and remains financially eligible as
6 determined by the State, except that the State may impose
7 reasonable time limits to degree completion.

8 **Updated information since 4/14-16 meetings:**

9 See attachment: SLEAP and GAP Draft Regulations.

10 **Tentative agreement:** Yes.

11 **Regulatory Language:**

12 See §692.111(b) on page 5 of Appendix A.

13 See §692.120 on page 8-9 of Appendix A.

14 **Statutory Language:**

15 (d) AUTHORIZED ACTIVITIES.—

16 (1) IN GENERAL.—

17 (A) * * *

18 (B) AMOUNT OF GRANTS.—The amount of a grant for access and
19 persistence awarded by a State to a student under this section
20 shall be not less than—

21 (i) the average undergraduate tuition and mandatory fees at
22 the public institutions of higher education in the State where
23 the student resides that are of the same type of institution as
24 the institution of higher education the student attends; minus

25 (ii) other Federal and State aid the student receives.

26 (C) SPECIAL RULES.—

1 (i) PARTNERSHIP INSTITUTIONS.—A State receiving an
2 allotment under this section may restrict the use of grants for
3 access and persistence under this section by awarding the grants
4 only to students attending institutions of higher education that
5 are participating in the partnership.

6 (ii) OUT-OF-STATE INSTITUTIONS.—If a State provides grants
7 through another program under this subpart to students attending
8 institutions of higher education located in another State,
9 grants awarded under this section may be used at institutions of
10 higher education located in another State.

11 (2) ***

12 (3) ELIGIBILITY.—In determining which students are eligible
13 to receive grants for access and persistence, the State shall
14 ensure that each such student complies with the following
15 subparagraph (A) or (B):

16 (A) Meets not less than two of the following criteria, with
17 priority given to students meeting all of the following
18 criteria:

19 (i) Has an expected family contribution equal to zero, as
20 determined under part F, or a comparable alternative based upon
21 the State’s approved criteria in section 415C(b) (4).

22 (ii) Qualifies for the State’s maximum undergraduate award,
23 as authorized under section 415C(b).

24 (iii) Is participating in, or has participated in, a
25 Federal, State, institutional, or community early information
26 and intervention, mentoring, or outreach program, as recognized
27 by the State agency administering activities under this section.

1 (B) Is receiving, or has received, a grant for access and
2 persistence under this section, in accordance with paragraph
3 (5).

4 (4) GRANT AWARD.—Once a student, including those students
5 who have received early notification under paragraph (2) from
6 the State, applies for admission to an institution that is a
7 partner in the partnership, files a Free Application for Federal
8 Student Aid and any related State form, and is determined
9 eligible by the State under paragraph (3), the State shall—

10 (A) issue the student a preliminary award certificate for a
11 grant for access and persistence with estimated award amounts;
12 and

13 (B) inform the student that payment of the grant for access
14 and persistence award amounts is subject to certification of
15 enrollment and award eligibility by the institution of higher
16 education.

17 (5) DURATION OF AWARD.—An eligible student who receives a
18 grant for access and persistence under this section shall
19 receive such grant award for each year of such student's
20 undergraduate education in which the student remains eligible
21 for assistance under this title, including pursuant to section
22 484(c), and remains financially eligible as determined by the
23 State, except that the State may impose reasonable time limits
24 to degree completion.

25

1 **Issue Paper #25**

2 **Origin:** HEOA

3 **Issue:** GAP Program Activities: Early Notification

4 **Statutory cites:** Section 415E(d) (2) of the HEA

5 **Regulatory cites:** §692.111(d)

6 **DCL GEN-08-12 cite:** Pages 114-115

7 **Summary of issue:** Each State receiving a GAP allotment must
8 annually notify low-income students in grades seven through 12
9 in the State, and their families, of their potential eligibility
10 for student financial assistance, including a LEAP Grant under
11 GAP, to attend an institution of higher education.

12 The notice must include:

- 13 • Information about early information and intervention,
14 mentoring, or outreach programs available to the student;
- 15 • Information that a student's eligibility for a LEAP Grant
16 under GAP is enhanced through participation in an early
17 information and intervention, mentoring, or outreach
18 program;
- 19 • An explanation that student and family eligibility for,
20 and participation in, other Federal means-tested programs
21 may indicate eligibility for a LEAP Grant under GAP and
22 other student aid programs;
- 23 • A nonbinding estimate of the total amount of financial
24 aid that a low-income student with a similar income level
25 may expect to receive, including an estimate of the
26 amount of a LEAP Grant under GAP and an estimate of the
27 amount of grants, loans, and all other available types of

1 aid from the major Federal and State financial aid
2 programs;

3 • An explanation that the eligibility requirements a
4 student must meet to be eligible for a LEAP Grant under
5 GAP including graduating from secondary school and
6 enrolling in a partner institution or an eligible out-of-
7 State institution;

8 • Information on any additional requirements (such as a
9 student pledge detailing student responsibilities) that
10 the State may impose for receipt of a LEAP Grant under
11 GAP; and

12 • Instructions on how to apply for a LEAP Grant under GAP
13 and an explanation that a student must file a FAFSA to be
14 eligible for a LEAP Grant under GAP and assistance from
15 other Federal and State financial aid programs.

16 The notification may include a disclaimer that LEAP Grants
17 under GAP are contingent on (a) a student's financial
18 eligibility at the time of the student's enrollment at an
19 institution of higher education; (b) the annual Federal and
20 State spending for higher education; and (c) other aid received
21 by the student at the time of the student's enrollment at an
22 institution of higher education.

23 **Updated information since 4/14-16 meetings:**

24 See attachment: SLEAP and GAP Draft Regulations.

25 **Tentative agreement:** Yes.

26 **Regulatory Language:**

27 See §692.111(d) on page 6 of Appendix A.

28 **Statutory Language:**

1 (2) EARLY NOTIFICATION.—

2 (A) IN GENERAL.—Each State receiving an allotment under
3 this section shall annually notify low-income students in grades
4 seven through 12 in the State, and their families, of their
5 potential eligibility for student financial assistance,
6 including an access and persistence grant, to attend an
7 institution of higher education.

8 (B) CONTENT OF NOTICE.—The notice under subparagraph (A)—

9 (i) shall include—

10 (I) information about early information and intervention,
11 mentoring, or outreach programs available to the student;

12 (II) information that a student’s eligibility for a grant
13 for access and persistence is enhanced through participation in
14 an early information and intervention, mentoring, or outreach
15 program;

16 (III) an explanation that student and family eligibility
17 for, and participation in, other Federal means-tested programs
18 may indicate eligibility for a grant for access and persistence
19 and other student aid programs;

20 (IV) a nonbinding estimate of the total amount of financial
21 aid that a low-income student with a similar income level may
22 expect to receive, including an estimate of the amount of a
23 grant for access and persistence and an estimate of the amount
24 of grants, loans, and all other available types of aid from the
25 major Federal and State financial aid programs;

26 (V) an explanation that in order to be eligible for a grant
27 for access and persistence, at a minimum, a student shall—

28 (aa) meet the requirement under paragraph (3);

29 (bb) graduate from secondary school; and

1 (cc) enroll at an institution of higher education–
2 (AA) that is a partner in the partnership; or
3 (BB) with respect to which attendance is permitted under
4 subsection (d) (1) (C) (ii);
5 (VI) information on any additional requirements (such as a
6 student pledge detailing student responsibilities) that the
7 State may impose for receipt of a grant for access and
8 persistence under this section; and
9 (VII) instructions on how to apply for a grant for access
10 and persistence and an explanation that a student is required to
11 file a Free Application for Federal Student Aid authorized under
12 section 483(a) to be eligible for such grant and assistance from
13 other Federal and State financial aid programs; and
14 (ii) may include a disclaimer that grant awards for access
15 and persistence are contingent on–
16 (I) a determination of the student’s financial eligibility
17 at the time of the student’s enrollment at an institution of
18 higher education that is a partner in the partnership or
19 qualifies under subsection (d) (1) (C) (ii);
20 (II) annual Federal and State spending for higher
21 education; and
22 (III) other aid received by the student at the time of the
23 student’s enrollment at such institution of higher education.

24

1 **Issue paper #26**

2 **Origin:** HEOA

3 **Issue:** Applicability of LEAP Program Requirements

4 **Statutory cites:** Section 415E(g) of the HEA

5 **Regulatory cites:** §§692.94(a)(4), 692.100(h) and 692.110

6 **DCL GEN-08-12 cite:** Page 110

7 **Summary of issue:** The HEOA provides that LEAP Program
8 requirements will apply to GAP to the extent that they are not
9 inconsistent with GAP requirements.

10 **Updated information since 4/14-16 meetings:**

11 See attachment: SLEAP and GAP Draft Regulations.

12 **Tentative agreement:** Yes.

13 **Regulatory Language:**

14 **See §692.94(a)(4) on page 2 of Appendix A.**

15 **See §692.100(h) on page 4 of Appendix A.**

16 **See §692.110 on pages 4-5 of Appendix A.**

17 **Statutory Language:**

18 (g) APPLICABILITY RULE.-The provisions of this subpart that
19 are not inconsistent with this section shall apply to the
20 program authorized by this section.

21

22

1 **Issue Paper #27**

2 **Origin:** HEOA

3 **Issue:** GAP Allotment: Application

4 **Statutory cites:** Section 415E(c) of the HEA

5 Regulatory cites: §§692.94 and 692.100

6 **DCL GEN-08-12 cite:** Pages 112-113

7 **Summary of issue:** To receive a GAP allotment, a State must
8 submit an application at such time, in such manner, and
9 containing such information as the Secretary may require.

10 An application on behalf of a partnership that must include
11 the following information:

- 12 • A description of the State's plan for using the allotted
13 funds.
- 14 • An assurance that the State will provide matching funds,
15 in cash or in-kind, from State, institutional,
16 philanthropic, or private funds, of not less than 33.33
17 percent of the cost of carrying out the program. A State
18 that uses non-Federal funds to create or expand
19 partnerships, in which partners match State funds for
20 student scholarships, may apply the matching funds from
21 those entities toward fulfilling the State's matching
22 non-Federal share.
- 23 • An assurance that the State will use Federal GAP funds to
24 supplement, and not supplant, Federal and State funds
25 available for carrying out the activities under Title IV
26 of the HEA.
- 27 • An assurance that early information and intervention,
28 mentoring, or outreach programs exist within the State or

1 that there is a plan to make these programs widely
2 available.

3 • A description of the organizational structure that the
4 State has in place to administer the program, including a
5 description of how the State will compile information on
6 degree completion of students receiving grants under this
7 section.

8 • A description of the steps the State will take to ensure
9 that students who receive a LEAP Grant under GAP persist
10 to degree completion.

11 • An assurance that the State has a method in place, such
12 as acceptance of the Title IV automatic zero EFC, to
13 identify eligible low-income students and award State
14 grant aid to such students.

15 • An assurance that the State will provide notification to
16 eligible low-income students that grants under GAP are
17 LEAP Grants and are funded by the Federal Government and
18 the State, and, where applicable, other contributing
19 partners.

20 The State agency that submits an application for GAP must
21 be the same agency that submits an application for LEAP.

22 A State agency must apply in partnership with:

23 • At least one public and one private degree-granting
24 institution of higher education that are located in the
25 State, if applicable;

26 • New or existing early information and intervention,
27 mentoring, or outreach programs located in the State; and

- 1 • At least one philanthropic organization located in, or
2 that provides funding in, the State or private
3 corporation located in, or that does business in, the
4 State.

5 **Updated information since 4/14-16 meetings:**

6 See attachment: SLEAP and GAP Draft Regulations.

7 **Tentative agreement:** Yes.

8

9 **Regulatory Language:**

10 **See §692.94 on page 2 of Appendix A.**

11 **See §692.100 on pages 2-4 of Appendix A.**

12 Statutory Language:

13 (c) Application for Allotment.--

14 (1) In general.--

15 (A) Submission.--A State that desires to receive an
16 allotment under this section on behalf of a partnership
17 described in paragraph (3) shall submit an application to the
18 Secretary at such time, in such manner, and containing such
19 information as the Secretary may require.

20 (B) Content.--An application submitted under subparagraph
21 (A) shall include the following:

22 (i) A description of the State's plan for using the
23 allotted funds.

24 (ii) An assurance that the State will provide matching
25 funds, in cash or in kind, from State, institutional,
26 philanthropic, or private funds, of not less than 33.33 percent
27 of the cost of carrying out the activities under subsection (d).

1 The State shall specify the methods by which matching funds will
2 be paid. A State that uses non-Federal funds to create or expand
3 partnerships with entities described in subsection (a)(1), in
4 which such entities match State funds for student scholarships,
5 may apply such matching funds from such entities toward
6 fulfilling the State's matching obligation under this clause.

7 (iii) An assurance that the State will use funds provided
8 under this section to supplement, and not supplant, Federal and
9 State funds available for carrying out the activities under this
10 title.

11 (iv) An assurance that early information and intervention,
12 mentoring, or outreach programs exist within the State or that
13 there is a plan to make such programs widely available.

14 (v) A description of the organizational structure that the
15 State has in place to administer the activities under subsection
16 (d), including a description of how the State will compile
17 information on degree completion of students receiving grants
18 under this section.

19 (vi) A description of the steps the State will take to
20 ensure that students who receive grants under this section
21 persist to degree completion.

22 (vii) An assurance that the State has a method in place,
23 such as acceptance of the automatic zero expected family
24 contribution determination described in section 479(c), to
25 identify eligible low-income students and award State grant aid
26 to such students.

27 (viii) An assurance that the State will provide
28 notification to eligible low-income students that grants under
29 this section are--

1 (I) Leveraging Educational Assistance Partnership Grants;
2 and

3 (II) funded by the Federal Government and the State, and,
4 where applicable, other contributing partners.

5 (2) State agency.--The State agency that submits an
6 application for a State under section 415C(a) shall be the same
7 State agency that submits an application under paragraph (1) for
8 such State.

9 (3) Partnership.--In applying for an allotment under this
10 section, the State agency shall apply for the allotment in
11 partnership with--

12 (A) not less than one public and one private degree-
13 granting institution of higher education that are located in the
14 State, if applicable;

15 (B) new or existing early information and intervention,
16 mentoring, or outreach programs located in the State; and

17 (C) not less than one--

18 (i) philanthropic organization located in, or that provides
19 funding in, the State; or

20 (ii) private corporation located in, or that does business
21 in, the State.

22

1 **Issue Paper #28**

2 **Origin:** HEOA

3 **Issue:** GAP Allotment: Determination

4 **Statutory cites:** Section 415E(b), 415E(g), and 415B of the
5 HEA

6 **Regulatory cites:** §692.110

7 **DCL GEN-08-12 cite:** Page 111

8 **Summary of issue:** The Secretary makes an allotment to each
9 State that submits an application to meet the costs of the
10 Federal share of the State's GAP program.

11 Under section 415(g) of the HEA, LEAP provisions that are
12 not inconsistent with GAP program requirements apply to GAP.
13 Section 415B of the HEA sets forth the allotment formula for the
14 subpart.

15 In making a continuation award for a State that continues
16 to meet the specifications in the State's approved application,
17 the Secretary makes an allotment to the State that is not less
18 than the allotment made to the State in the previous year.

19 The Secretary gives priority to a State that applies for an
20 allotment in partnerships with degree-granting institutions
21 whose combined full-time enrollment represents a majority of all
22 students attending institutions of higher education in the
23 State.

24 **Updated information since 4/14-16 meetings:**

25 See attachment: SLEAP and GAP Draft Regulations.

26 **Tentative agreement:** Yes.

27 **Regulatory Language:**

1 See subpart B, §692.70 on page 1 of Appendix A.

2 See §692.110 on pages 4-5 of Appendix A.

3 **Statutory Language:**

4 **SEC. 4415E**

5 * * * * *

6 (b) Allotments to States.--

7 (1) In general.--

8 (A) Authorization.--From sums reserved under section
9 415A(b) (2) for each fiscal year, the Secretary shall make an
10 allotment to each State that submits an application for an
11 allotment in accordance with subsection (c) to enable the State
12 to pay the Federal share, as described in paragraph (2), of the
13 cost of carrying out the activities under subsection (d).

14 (B) Determination of allotment.--In making allotments under
15 subparagraph (A), the Secretary shall consider the following:

16 (i) Continuation of award.--If a State continues to meet
17 the specifications established in such State's application under
18 subsection (c), the Secretary shall make an allotment to such
19 State that is not less than the allotment made to such State for
20 the previous fiscal year.

21 (ii) Priority.--The Secretary shall give priority in making
22 allotments to States that meet the requirements described in
23 paragraph (2) (B) (ii).

24 (2) Federal share.--

25 (A) In general.--The Federal share of the cost of carrying
26 out the activities under subsection (d) for any fiscal year
27 shall not exceed 66.66 percent.

1 (B) Different percentages.--The Federal share under this
2 section shall be determined in accordance with the following:

3 (i) The Federal share of the cost of carrying out the
4 activities under subsection (d) shall be 57 percent if a State
5 applies for an allotment under this section in partnership with
6 any number of degree-granting institutions of higher education
7 in the State whose combined full-time enrollment represents less
8 than a majority of all students attending institutions of higher
9 education in the State, and--

10 (I) philanthropic organizations that are located in, or
11 that provide funding in, the State; or

12 (II) private corporations that are located in, or that do
13 business in, the State.

14 (ii) The Federal share of the cost of carrying out the
15 activities under subsection (d) shall be 66.66 percent if a
16 State applies for an allotment under this section in partnership
17 with any number of degree-granting institutions of higher
18 education in the State whose combined full-time enrollment
19 represents a majority of all students attending institutions of
20 higher education in the State, and--

21 (I) philanthropic organizations that are located in, or
22 that provide funding in, the State; or

23 (II) private corporations that are located in, or that do
24 business in, the State.

25 (C) Non-federal share.--

26 (i) In general.--The non-Federal share under this section
27 may be provided in cash or in kind, fairly evaluated.

1 (ii) In-kind contribution.--For the purpose of calculating
2 the non-Federal share under this subparagraph, an in-kind
3 contribution is a non-cash contribution that--

4 (I) has monetary value, such as the provision of--

5 (aa) room and board; or

6 (bb) transportation passes; and

7 (II) helps a student meet the cost of attendance at an
8 institution of higher education.

9 (iii) Effect on need analysis.--For the purpose of
10 calculating a student's need in accordance
11 with part F, an in-kind contribution described in clause (ii)
12 shall not be considered an asset or income of the student or the
13 student's parent.

14 * * * * *

15 (g) APPLICABILITY RULE.--The provisions of this subpart that
16 are not inconsistent with this section shall apply to the
17 program authorized by this section.

18 **SEC. 415B. [20 U.S.C. 1070c-1] ALLOTMENT AMONG STATES.**

19 (a) ALLOTMENT BASED ON NUMBER OF ELIGIBLE STUDENTS IN
20 ATTENDANCE.—

21 (1) From the sums appropriated pursuant to section
22 415A(b) (1) and not reserved under section 415A(b) (2) for any
23 fiscal year, the Secretary shall allot to each State an amount
24 which bears the same ratio to such sums as the number of
25 students who are deemed eligible in such State for participation
26 in the grant program authorized by this subpart bears to the
27 total number of such students in all the States, except that no
28 State shall receive less than the State received for fiscal year
29 1979.

1 **(2)** For the purpose of this subsection, the number of
2 students who are deemed eligible in a State for participation in
3 the grant program authorized by this subpart, and the number of
4 such students in all the States, shall be determined for the
5 most recent year for which satisfactory data are available.

6 **(b) REALLOTMENT.**—The amount of any State's allotment under
7 subsection (a) for any fiscal year which the Secretary
8 determines will not be required for such fiscal year for the
9 leveraging educational assistance partnership program of that
10 State shall be available for reallocation from time to time, on
11 such dates during such year as the Secretary may fix, to other
12 States in proportion to the original allotments to such States
13 under such part for such year, but with such proportionate
14 amount for any of such States being reduced to the extent it
15 exceeds the sum the Secretary estimates such State needs and
16 will be able to use for such year for carrying out the State
17 plan. The total of such reductions shall be similarly reallocated
18 among the States whose proportionate amounts were not so
19 reduced. Any amount reallocated to a State under this part
20 during a year from funds appropriated pursuant to section
21 415A(b) (1) shall be deemed part of its allotment under
22 subsection (a) for such year.

23 **(c) ALLOTMENTS SUBJECT TO CONTINUING COMPLIANCE.**—The
24 Secretary shall make payments for continuing incentive grants
25 only to States which continue to meet the requirements of
26 section 415C(b).

27

1 **Issue Paper #29**

2 **Origin:** HEOA

3 **Issue:** Matching

4 **Statutory cites:** 415E(b) (2), (h), and (i) of the HEA

5 Regulatory cites: **§692.113**

6 **DCL GEN-08-12 cite:** Pages 111-112

7 **Summary of issue:**

8 **Matching funds**

9 A State may provide the non-Federal share in cash or in-
10 kind, fairly evaluated. An in-kind contribution is a noncash
11 contribution that has monetary value, such as the provision of
12 room and board or transportation passes, and helps a student
13 meet the cost of attendance at an institution of higher
14 education.

15 **Non-Federal share**

16 The Federal share of the program costs may not exceed 66.66
17 percent.

18 The Federal share of the program costs in a State is 57
19 percent in the case of a State that is in partnership with
20 degree-granting institutions of higher education in the State
21 whose combined fulltime enrollment represents *less than a*
22 *majority* of all students attending institutions in the State and
23 with philanthropic organizations that are located in, or that
24 provide funding in, the State or private corporations that are
25 located in, or that do business in, the State.

26 The Federal share of the program costs in a State is 66.66
27 percent in the case of a State that is in partnership with
28 degree-granting institutions of higher education in the State

1 whose combined full-time enrollment represents a *majority* of all
2 students attending institutions in the State and with
3 philanthropic organizations that are located in, or that provide
4 funding in, the State or private corporations that are located
5 in, or that do business in, the State.

6 ***Maintenance-of-effort requirement***

7 Each State receiving a GAP allotment for a fiscal year must
8 provide the Secretary with an assurance that the aggregate
9 amount expended per student or the aggregate expenditures by the
10 State, from funds derived from non-Federal sources, for
11 activities authorized for GAP for the preceding fiscal year were
12 not less than the amount expended per student or the aggregate
13 expenditure by the State for the activities for the second
14 preceding fiscal year.

15 **Base-year requirement**

16 Notwithstanding the maintenance-of-effort requirement, for
17 purposes of determining a State's share of the cost of the GAP
18 program activities, the State must consider only those
19 expenditures from non-Federal sources that exceed the State's
20 total expenditures for need-based grants, scholarships, and
21 work-study assistance for fiscal year 1999 (including any such
22 assistance provided under LEAP and GAP).

23 **Updated information since 4/14-16 meetings:**

24 See attachment: SLEAP and GAP Draft Regulations.

25 **Tentative agreement:** Yes.

26 **Regulatory Language:**

27 **See §692.113 on pages 7-8 of Appendix A.**

28 Statutory Language:

1 (b) * * *

2 (2) FEDERAL SHARE.—

3 (A) IN GENERAL.—The Federal share of the cost of carrying
4 out the activities under subsection (d) for any fiscal year
5 shall not exceed 66.66 percent.

6 (B) DIFFERENT PERCENTAGES.—The Federal share under this
7 section shall be determined in accordance with the following:

8 (i) The Federal share of the cost of carrying out the
9 activities under subsection (d) shall be 57 percent if a State
10 applies for an allotment under this section in partnership with
11 any number of degree-granting institutions of higher education
12 in the State whose combined full-time enrollment represents less
13 than a majority of all students attending institutions of higher
14 education in the State, and—

15 (I) philanthropic organizations that are located in, or
16 that provide funding in, the State; or

17 (II) private corporations that are located in, or that do
18 business in, the State.

19 (ii) The Federal share of the cost of carrying out the
20 activities under subsection (d) shall be 66.66 percent if a
21 State applies for an allotment under this section in partnership
22 with any number of degree-granting institutions of higher
23 education in the State whose combined full-time enrollment
24 represents a majority of all students attending institutions of
25 higher education in the State, and—

26 (I) philanthropic organizations that are located in, or
27 that provide funding in, the State; or

28 (II) private corporations that are located in, or that do
29 business in, the State.

1 (C) NON-FEDERAL SHARE.—

2 (i) IN GENERAL.—The non-Federal share under this section
3 may be provided in cash or in kind, fairly evaluated.

4 (ii) IN-KIND CONTRIBUTION.—For the purpose of calculating
5 the non-Federal share under this subparagraph, an in-kind
6 contribution is a non-cash contribution that—

7 (I) has monetary value, such as the provision of—

8 (aa) room and board; or

9 (bb) transportation passes; and

10 (II) helps a student meet the cost of attendance at an
11 institution of higher education.

12 (iii) EFFECT ON NEED ANALYSIS.—For the purpose of
13 calculating a student's need in accordance with part F, an in-
14 kind contribution described in clause (ii) shall not be
15 considered an asset or income of the student or the student's
16 parent.

17 * * * * *

18 (h) MAINTENANCE OF EFFORT REQUIREMENT.—Each State receiving
19 an allotment under this section for a fiscal year shall provide
20 the Secretary with an assurance that the aggregate amount
21 expended per student or the aggregate expenditures by the State,
22 from funds derived from non-Federal sources, for the authorized
23 activities described in subsection (d) for the preceding fiscal
24 year were not less than the amount expended per student or the
25 aggregate expenditure by the State for the activities for the
26 second preceding fiscal year.

27 (i) SPECIAL RULE.—Notwithstanding subsection (h), for
28 purposes of determining a State's share of the cost of the
29 authorized activities described in subsection (d), the State

1 shall consider only those expenditures from non-Federal sources
2 that exceed the State's total expenditures for need-based
3 grants, scholarships, and work-study assistance for fiscal year
4 1999 (including any such assistance provided under this
5 subpart).

6

1 **Issue Paper #30**

2 **Origin:** HEOA

3 **Issue:** Statutory and regulatory relief

4 **Statutory cites:** 415E(f) of the HEA

5 Regulatory cites: **§692.130**

6 **DCL GEN-08-12 cite:** Page 115

7 **Summary of issue:** The Secretary may grant, upon the request of
8 an institution of higher education that is in a partnership with
9 a 66.66 percent Federal share, a waiver for such institution
10 from statutory or regulatory requirements that inhibit the
11 ability of the institution to successfully and efficiently
12 participate in the activities of the partnership.

13 **Updated information since 4/14-16 meetings:**

14 See attachment: SLEAP and GAP Draft Regulations.

15 **Tentative agreement:** Yes.

16 **Regulatory Language:**

17 **See §692.130 on page 9 of Appendix A.**

18 Statutory Language:

19 (f) STATUTORY AND REGULATORY RELIEF FOR INSTITUTIONS OF
20 HIGHER EDUCATION.—The Secretary may grant, upon the request of
21 an institution of higher education that is in a partnership
22 described in subsection (b)(2)(B)(ii) and that receives an
23 allotment under this section, a waiver for such institution from
24 statutory or regulatory requirements that inhibit the ability of
25 the institution to successfully and efficiently participate in
26 the activities of the partnership.

1 **Issue Paper #31**

2 **Origin:** HEOA

3 **Issue:** Estimated financial assistance

4 **Statutory cites:** 415E(b) (2) (C) (iii) of the HEA

5 **Regulatory cites:** None

6 **DCL GEN-08-12 cite:** Page 112

7 **Summary of issue:** For purposes of calculating a student's need
8 in accordance with title IV, part F of the HEA, an in-kind
9 contribution is not considered an asset or income of the student
10 or the student's parent.

11 **Updated information since 4/14-16 meetings:**

12 See attachment: SLEAP and GAP Draft Regulations.

13 **Tentative agreement:** Yes.

14 **Regulatory Language:**

15 None.

16 **Statutory Language:**

17 (iii) EFFECT ON NEED ANALYSIS.—For the purpose of
18 calculating a student's need in accordance with part F, an in-
19 kind contribution described in clause (ii) shall not be
20 considered an asset or income of the student or the student's
21 parent.