

Team V – General and Non-Loan Issues

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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

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

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

Tentative agreement:

Regulatory language:

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

* * * * *

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

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

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

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

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

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

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

~~(a)~~ If a student enrolls in a payment period that is scheduled to occur in two award years--

~~(1a)~~ The entire payment period must be considered to occur within one award year-;

~~(2b) (1) An institution shall assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time of disbursement The institution shall determine for each Federal Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a) (3) of this section.;~~

~~(2) If, subsequent to the initial disbursement for the payment period, the institution determines that the student would receive a greater payment for the payment period by reassigning the payment to a different award year, the institution may reassign the payment to the award year providing the greater payment;~~

~~(3c)~~ The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year-;

~~(4d)~~ If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year-; and

~~(5e)~~ If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

~~(b) An institution may not make a payment which will result in the student receiving more than one Scheduled Award his or her Scheduled Federal Pell Grant for an award year.~~

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

An institution shall award up to a second Scheduled Award to a student in an award year if the student--

(a) Is enrolled at least as a half-time student in a payment period during which the student would be earning credit or clock hours applicable to a second academic year in the award year; and

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

\$690.80 Recalculation of a Federal Pell Grant award.

* * * * *

(b) Change in enrollment status.

(1) * * *

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

Statutory Language:

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

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

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

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

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

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

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

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

Issue Paper # 2

Origin: HEOA

Issue: Maximum Federal Pell Grant Award to Children of Soldiers

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

Regulatory cites: §690.75

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

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

Updated information since 2/2-4 meetings:

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

Tentative agreement:

Regulatory language:

§690.75 Determination of eligibility for payment.

* * *

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

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

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

(i) Was under the age of 24; or

(ii) Was enrolled at an institution of higher education; and

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

Statutory Language:

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

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

(i) whose parent or guardian was a member of the Armed Forces of the United States who died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

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

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

Issue Paper # 3

Origin: Higher Education Opportunity Act of 2008

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

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

Regulatory cites: §686.41 and §686.42

DCL GEN-08-12 cite: Page 106

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

Updated information since 3/2-4 meetings:

Section 686.41 would be amended to limit the suspension for a call or order to active duty status for a TEACH Grant recipient to three years. After the three-year period, a TEACH Grant recipient could apply for a discharge of his or her service obligation.

Section 686.42 would be amended to provide that a TEACH Grant recipient could apply for a discharge of a portion or all of his or her service obligation based on the number of years called or ordered to active duty status.

Tentative agreement:

Regulatory language:

§686.41 Periods of suspension.

(a) (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program

for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on--

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

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

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

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

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

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

(b) A grant recipient must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under Sec. 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

§686.42 Discharge of agreement to serve.

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

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

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

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

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

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

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

(c) Military discharge. (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under §686.41(a)(2)(ii), may request in writing to the Secretary, a proportional discharge of his or her service obligation due to an extended call or order to active duty status.

(2) A grant recipient described in paragraph (c)(1) may receive a--

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than 3 years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than 4 years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than 5 years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for 6 or more years.

(3) Documentation needed for a Military discharge. A grant recipient must provide the Secretary with--

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

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

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

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

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

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

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

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

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

(7) The Secretary will notify the grant recipient of the outcome of his or her request for a military discharge. For the portion on the service obligation that remains, the grant

recipient must continue to fulfill his or her service obligation in accordance with §686.12.

Statutory Language:

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

Issue Paper #4

Origin: HEOA

Issue: Grants for FWS Program

Statutory cites: Section 443 of the HEA

Regulatory cites: §§ 675.18, 675.26

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

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

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

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

Updated information since 3/2-4 meetings: Section 675.18 would be amended to implement section 443 of the HEOA that promotes the use of FWS funds to employ students in community service projects, doing civic education and participation activities.

When a school has students performing these projects, to the

extent practicable it must give priority to the employment of students participating in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and ensure that the students receive the appropriate training to carry out the educational services required.

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

Tentative agreement:

Regulatory language:

§675.18 Use of funds.

* * * * *

(f) * * *

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

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

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

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in

paragraph (g) (1) of this section would cause a hardship for students at the institution.

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

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

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

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

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

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

(A) Teach civics in schools;

(B) Raise awareness of government functions or resources;

or

(C) Increase civic participation.

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

(A) Give priority to the employment of students in projects that educate or train the public about evacuation, emergency

response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and

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

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

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

* * * * *

§675.26 FWS Federal share limitations.

* * * * *

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

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

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

(A) Is designated as an eligible institution under—

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

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

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

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

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

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

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

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

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

* * * * *

Statutory language:

(a) AGREEMENTS REQUIRED.—The Secretary is authorized to enter into agreements with institutions of higher education under which the Secretary will make grants to such institutions to assist in the operation of work-study programs as provided in this part.

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

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

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

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

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

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

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

(A) for fiscal year 2000 and succeeding fiscal years, an institution shall use at least 7 percent of the total amount of

funds granted to such institution under this section for such fiscal year to compensate students employed in community service, and shall ensure that not less than 1 tutoring or family literacy project (as described in subsection (d)) is included in meeting the requirement of this subparagraph, except that the Secretary may waive this subparagraph if the Secretary determines that enforcing this subparagraph would cause hardship for students at the institution; and

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

* * * * *

(B) * * *

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

(e) CIVIC EDUCATION AND PARTICIPATION ACTIVITIES.—

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

(A) teach civics in schools;

(B) raise awareness of government functions or resources;

or

(C) increase civic participation.

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

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

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

Issue Paper #5

Origin: HEOA

Issue: Conform the FWS rules to the Cash Management Rules

Statutory cites: None

Regulatory cites: §675.16

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

Updated information since 3/2-4 meetings: These changes would:

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

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

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

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

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

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

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

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

Tentative Agreement:

Regulatory language:

§675.16 Payments to students.

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

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

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

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

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

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

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

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

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

(i) Funds received from the Secretary; or

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

(b) Crediting a student's account at the institution. (1)

If the institution obtains the student's authorization described in paragraph (d) of this section, the institution may use the FWS funds to credit a student's account at the institution to satisfy-

(i) Current year charges for-

(A) Tuition and fees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 CFR 668.161 Scope and purpose (Cash Management rules)

* * *

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

* * * * *

Issue Paper #6

Origin: HEOA

Issue: Definition of Community Service

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

Regulatory cites: §675.2

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

Updated information since 3/2-4 meetings: Section 675.2 would be amended to include emergency preparedness and response.

Tentative agreement:

Regulatory language:

675.2 Definitions

* * * * *

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

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

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, emergency preparedness

and response, crime prevention and control, recreation, rural development, and community improvement;

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

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

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

(A) tutoring;

(B) supporting educational and recreational activities; and

(C) counseling, including career counseling.

Issue Paper #8

Origin: HEOA

Issue: Work Colleges

Statutory cites: Section 448 of the HEA

Regulatory cites: §675.41

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

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

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

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

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

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

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

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

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

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

Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

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

Statutory language:

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

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

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

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

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

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

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

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

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

education shall demonstrate compliance with all eligibility and certification requirements under section 498 for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

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

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

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

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

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

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

Issue Paper # 11

Origin: HEOA

Issue: Disclosure of Fire Safety Standards and Measures

Statutory cites: Section 485(i) of the HEA

Regulatory cites: §668.41 and §668.49

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

Summary of issue: The HEOA requires that all Title IV eligible institutions that participate in any Title IV program and that maintain on-campus student housing facilities publish an annual fire safety report.

This report must contain information about campus fire safety practices and standards, including:

- Statistics for each on-campus housing facility, during the most recent calendar years for which data are available, concerning each of the following:
 - The number of fires and the cause of each fire;
 - The number of injuries related to each fire that result in treatment at a medical facility;
 - The number of deaths related to each fire; and
 - The value of property damage caused by each fire.
- A description of each on-campus student housing facility fire safety and sprinkler system;
- The number of regular mandatory supervised fire drills;
- The policies or rules on portable electrical appliances, smoking, open flames (such as candles);
- The procedures for evacuation;

- The policies regarding fire safety education and training programs provided to students, faculty, and staff; and
- Plans for future improvements in fire safety, if determined necessary by the institution.

Institutions participating in any Title IV programs must submit a copy of the statistics required in the first bullet to the Secretary on an annual basis. Furthermore, institutions must create and maintain a log of all fires in on-campus student housing facilities, including the nature, date, time, and general location of each fire, and prepare and submit annual reports to the campus community on those fires.

Updated information since 3/2-4 meetings: Section 668.41(e) would be amended to require that the publication of the annual fire safety report mirror that of the annual security report. A new §668.49 would be added to implement the requirements in section 485(i) of the HEA regarding institutional fire safety policies and fire statistics. Paragraph (a) defines additional terms that apply to the new section, including 'cause of fire,' 'fire,' 'fire drill,' 'fire-related injury,' 'fire-related death,' 'fire safety system,' and 'value of property damage.' Definitions were taken when available from the National Fire Incident Reporting System in order to maintain consistency across definitions. Paragraphs (b) and (c) describe the information that an institution must include in the annual fire safety report, as required by the statute, as well as the statistics that an institution must report to the campus community and to the Secretary. Paragraph (d) clarifies that an institution may choose to combine its annual fire safety report with the annual security report; however, it must be clear to the reader that both reports are included. If an institution does not combine the reports, a direct link must be provided in

each report to the other report so that it is easy for consumers to find and compare information. Paragraph (e) describes requirements for the campus fire log, which mirrors the crime log required in §668.46(f).

Tentative Agreement:

Regulatory Language:

§668.41 Reporting and disclosure of information.

* * *

(e) Annual security report and annual fire safety report - (1) *Enrolled students and current employees - annual security report and annual fire safety report*. By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in §668.46(b), and its annual fire safety report described in §668.49(b), through appropriate publications and mailings, including--

* * *

(e) (2) Enrolled students - annual security report and annual fire safety report. If an institution chooses to distribute its annual security report or its annual fire safety report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c) (2) of this section.

(e) (3) Current employees - annual security report and annual fire safety report. If an institution chooses to distribute its annual security report or its annual fire safety report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must,

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

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This report may be included as a part of the annual fire safety report.

Statutory Language:

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

(1) ANNUAL FIRE SAFETY REPORTS ON STUDENT HOUSING REQUIRED.—Each eligible institution participating in any program under this title that maintains on-campus student housing facilities shall, on an annual basis, publish a fire safety report, which shall contain information with respect to the campus fire safety practices and standards of that institution, including—

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

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

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

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

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

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

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

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

* * *

(h) Missing person notification policies and procedures.

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

(i) Indicate the person or organization to which students and employees should report that a student has been missing for 24 hours;

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

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

(iv) Advise students that their contact information will be registered confidentially.

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

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

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

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

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

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

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

(VIII) arson; and

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

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

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

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

student who fails to apply for readmission within the required period does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

A student who submits an application for readmission to an institution must provide to the institution documentation to establish that

- the student has not exceeded the specified service limitations; and
- the student's eligibility for readmission has not been terminated.

An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

- a separation of such person from the Armed Forces (including the National Guard and reserves) with a dishonorable or bad conduct discharge;
- a dismissal of such person permitted under section 1161(a) of Title 10, U.S.C.; or
- a dropping of such person from the rolls pursuant to section 1161(b) of Title 10, U.S.C.

These provisions were based on the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Title 10 of the U.S.C. can be accessed at

<http://www.access.gpo.gov/uscode/title10/title10.html>

Title 14 of the U.S.C. can be accessed at

<http://www.access.gpo.gov/uscode/title14/title14.html>

Note: The HEOA also added a provision to the HEA at section 131(f) which, effective August 14, 2009, requires the Secretary to coordinate with the Secretary of Defense and the Secretary of Veterans Affairs to create a searchable website within the Federal student financial aid website that, in addition to containing information about all Federal and State student financial assistance, must contain information about the readmission requirements under section 484C of the HEA and other student services for which members of the Armed Forces may be eligible. In addition, the Secretary is required to work with the Secretary of Defense and the Secretary of Veterans Affairs to make the availability of the Armed Forces information website widely known to members of the Armed Forces, institutions of higher education, and the general public. The Department does not plan to expand on this provision in regulations and, therefore, has not included it as a provision that will be negotiated.

Updated information since 3/2-4 meetings:

General

Section 668.18(a) would include the general requirements of the statute that an institution may not deny readmission to a servicemember, but must readmit the servicemember with the same

academic status as the student had when the student was last admitted to the institution. The regulations would specify that the institution must admit the student promptly, and define what it means to "promptly readmit" a student. Section 668.18(a) would also specify what it means to readmit a person with the same academic status.

In the case of a student who is not prepared to resume the program at the point where he or she left off, §668.18(a) would require the institution to make reasonable efforts to help the student become prepared including, but not limited to, providing refresher courses at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off.

Section 668.18(a) would clarify that the requirements of this section apply to an institution even if that institution has undergone a change of ownership since the student ceased attendance.

Finally, §668.18(a) would make clear that the provisions of this section supersede any State law or other requirement that reduce, limit, or eliminate any right or benefit provided by this section.

Service in the uniformed services

Section 668.18(b) would delineate what service in the uniformed services means for purposes of this section. This section would expand upon the statutory language to clarify that service in the uniformed services includes active duty for training and full-time National Guard duty under Federal authority (i.e., not National Guard service under authority of State law). In addition, the regulations would specify that

qualifying service must be for more than 30 *consecutive* days under a call or order to active duty of more than 30 *consecutive* days.

Readmission procedures

Section 668.18(c) would list the conditions under which an institution must readmit a servicemember. The regulations would require an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of an intent to return to the institution. The regulations would make clear that advance notice must be provided by the student as far in advance as is reasonable under the circumstances. However such notice would not need to follow any particular format, nor would a student have to indicate as part of the notice whether the student intends to return to the institution. Also, the regulations would make clear that an institution may not set a brightline deadline for submission of any such notice, but must judge the timeliness of submission by the facts of a particular case. As such notice may be provided by an appropriate officer of the Armed Forces, the regulations would clarify who an "appropriate officer" is. Section 668.18(c) would also provide that a student's notice of intent to return may be provided orally or in writing, as specified in the statute for advance notice from students of their absence from the institution necessitated by service in the uniformed services. The notice of intent to return would not need to follow any particular format.

Exceptions to advance notice

Section 668.18(d) would restate the statutory language for exceptions to advance notice.

Cumulative length of absence

Section 668.18(e) would list the types of service that are not included in the cumulative length of the student's absence, including a brief description of the types of services referenced in titles 10 and 14 of the United States Code.

Notification of Intent to Reenroll

Section 668.18(f) would restate the statutory provision providing that a student who fails to apply for readmission within the required periods does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

Documentation

Section 668.18(g) would list the documentation that a student must submit with an application for readmission. The regulations would list several types of documentation that satisfy the documentation requirements, making clear that the types of documentation available or necessary will vary from case to case.

Termination of readmission eligibility

Section 668.18(f) would list the circumstances under which a student's eligibility for readmission to an institution would be terminated, including a brief description of the types of circumstances referenced in title 10 of the United States Code.

Tentative agreement:

Regulatory language:

[The whole section is new. The mark-up shows changes to/expansion on the statutory requirements of the HEOA.]

Section 668.18 Readmission requirements for servicemembers.

(a) General. (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(2) (i) An institution must promptly readmit to the institution a person described in paragraph (a) (1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance.

(ii) "Promptly readmit" means as soon as practicable under the circumstances of each case. Absent unusual circumstances, the individual must be readmitted into the next class or classes in the student's program beginning after the individual provides notice of his or her intent to reenroll, unless the individual requests a later date of readmission.

(iii) To readmit a person with the same academic status means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the institution or, if that exact program is no longer offered, the program that is most similar to that program;

(B) At the same enrollment status that the student last held at the institution;

(C) With the same number of completed credit hours or clock hours;

(D) With the same student status (e.g., if the student was on probation when he or she last attended the institution, the student is readmitted in a probation status);

(E) With the same institutional charges that would have been charged had the student been continuously enrolled; and

(F) With the same satisfactory academic progress status.

(iv) (A) If institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, the institution must make reasonable efforts to help the student become prepared including, but not limited to, providing refresher courses at no extra cost. The institution is not required to readmit the student on his or her return from service if he or she is not, after reasonable efforts by the institution, prepared to resume the program at the point where he or she left off.

(B) (I) "Reasonable efforts" means actions that do not place an undue hardship on the institution.

(II) "Undue hardship" means an action requiring significant difficulty or expense.

(C) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, after the institution makes reasonable efforts to help the student become prepared.

(3) This provision applies to an institution that has continued in operation since the student ceased attending,

notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section.

(b) Service in the uniformed services. For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including ~~such~~ service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) Readmission procedures. (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if-

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written ~~or verbal~~ notice of such service to an office designated by the appropriate official at the institution, providing such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student

spends actually performing service in the uniformed services,
does not exceed five years;

(iii) Except as provided in paragraph (f) of this section,
the student gives oral or written notice ~~cefies the institution~~ of
his or her intent to return to an office designated by the
institution-

(A) For a student who completes a period of service in the
uniformed services, not later than three years after the
completion of the period of service; or

(B) For a student who is hospitalized for or convalescing
from an illness or injury incurred in or aggravated during the
performance of service in the uniformed services, two years
after the end of the period that is necessary for recovery from
such illness or injury.

(2) (i) An institution must designate one or more offices
at the institution that a student may readily contact to provide
notification of service required by paragraph (c) (1) (i) of this
section and notification of intent to return required by
paragraph (c) (1) (iii) of this section.

(ii) An institution may not require that the notice
provided by the student under paragraph (c) (1) (i) or (c) (1) (iii)
of this section follow any particular format.

(iii) The notice provided by the student under paragraph
(c) (1) (i) of this section-

(A) May not be subject to any brightline rule for
timeliness; timeliness must be determined by the facts in any
particular case; and

(B) Does not need to indicate whether the student intends
to return to the institution.

(iv) For purposes of paragraph (c) (1) (i) of this section, an "appropriate officer" is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) Exceptions to advance notice. (1) No notice is required under paragraph (c) (1) (i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge; or

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or verbal notice of service to the appropriate official at the institution in accordance with paragraph (c) (1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) Cumulative length of absence. For purposes of paragraph (c) (1) (ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed

services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) ~~Ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10, United States Code, or under section 331, 332, 359, 360, 367, or 712 of title 14, United States Code;--~~

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast

Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) Notification of intent to reenroll. A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

(g) Documentation. (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(D) Certificate of completion from military training school;

(E) Discharge certificate showing character of service;

(F) Copy of extracts from payroll documents showing periods of service; and

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) Termination of readmission eligibility. A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events—

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge;

(2) A dismissal of ~~such person~~ a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or

(3) A dropping of ~~such person~~ a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

Statutory Language:

SEC. 484C. READMISSION REQUIREMENTS FOR SERVICEMEMBERS.

(a) DEFINITION OF SERVICE IN THE UNIFORMED SERVICES.—

In this section, the term 'service in the uniformed services' means service (whether voluntary or involuntary) on active duty in the Armed Forces, including such service by a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.

(b) DISCRIMINATION AGAINST STUDENTS WHO SERVE IN THE UNIFORMED SERVICES PROHIBITED.—A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services shall not be denied readmission to an institution of higher education on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) READMISSION PROCEDURES.—

(1) IN GENERAL.—Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution of higher education if—

(A) the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution of higher education;

(B) the cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and

(C) except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution of higher education in accordance with the provisions of paragraph (4).

(2) EXCEPTIONS.—

(A) MILITARY NECESSITY.—No notice is required under paragraph (1)(A) if the giving of such notice is precluded by military necessity, such as—

(i) a mission, operation, exercise, or requirement that is classified; or

(ii) a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(B) FAILURE TO GIVE ADVANCE NOTICE.—Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or verbal notice of service to the appropriate official at the institution of higher education in accordance with paragraph (1)(A) may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student's institution of higher education that the student performed service in the uniformed services that necessitated the student's absence from the institution of higher education.

(3) APPLICABILITY.—This section shall apply to a student who is absent from an institution of higher education by reason of service in the uniformed services if such student's cumulative period of service in the Armed Forces (including the National Guard or Reserve), with respect to the institution of higher education for which a student seeks readmission, does not exceed five years, except that any such period of service shall not include any service—

(A) that is required, beyond five years, to complete an initial period of obligated service;

(B) during which such student was unable to obtain orders releasing such student from a period of service in the uniformed services before the expiration of such five year period and such inability was through no fault of such student; or

(C) performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10, United States Code, or under section 331, 332, 359, 360, 367, or 712 of title 14, United States Code;

(ii) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code.

(4) NOTIFICATION OF INTENT TO RETURN.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a student referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the institution of higher education of the student's intent to

return to the institution not later than three years after the completion of the period of service.

(B) HOSPITALIZATION OR CONVALESCENCE.—A student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services shall notify the institution of higher education of the student's intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(C) SPECIAL RULE.—A student who fails to apply for readmission within the period described in this section shall not automatically forfeit such eligibility for readmission to the institution of higher education, but shall be subject to the institution of higher education's established leave of absence policy and general practices.

(5) DOCUMENTATION.—

(A) IN GENERAL.—A student who submits an application for readmission to an institution of higher education under this section shall provide to the institution of higher education documentation to establish that—

(i) the student has not exceeded the service limitations established under this section; and

(ii) the student's eligibility for readmission has not been terminated due to an exception in subsection (d).

(B) PROHIBITED DOCUMENTATION DEMANDS.—An institution of higher education may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(6) NO CHANGE IN ACADEMIC STATUS.—A student who is readmitted to an institution of higher education under this section shall be readmitted with the same academic status as such student had when such student last attended the institution of higher education.

(d) EXCEPTION FROM READMISSION ELIGIBILITY.—A student's eligibility for readmission to an institution of higher education under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of such person permitted under section 1161(a) of title 10, United States Code.

(3) A dropping of such person from the rolls pursuant to section 1161(b) of title 10, United States Code.

Issue Paper #17

Origin: HEOA

Issue: Institutional requirements for teach-outs/eligibility and certification procedures-treatment of teach-outs

Statutory cites: Sections 487(f) and 498 of the HEA

Regulatory cites: §600.20 and §668.14

DCL GEN-08-12 cite: Pages 72 and 74

Summary of issue: Effective August 14, 2008, section 487(f) of the HEA provides that, whenever the Secretary initiates an action to limit, suspend, or terminate (LS or T) an institution's participation in any Title IV program or initiates an emergency action against an institution, the institution must prepare a teach-out plan for submission to its accrediting agency. The teach-out plan must be prepared in accordance with section 496(c)(6) of the HEA [mistakenly cited as section 496(c)(4) in the HEA] and any applicable Title IV regulations or accrediting agency standards. A "teach-out plan" is defined as a written plan that provides for equitable treatment of students if an institution ceases to operate before all students have completed their program of study. Currently, the regulations governing the Secretary's recognition of accrediting agencies define a "teach-out agreement" as a written agreement between institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program (§602.3). Consideration should be given to developing one definition for all Title IV regulations.

Also effective August 14, 2008, section 498 of the HEA provides that a location of a closed institution is eligible as an additional location of another institution for the purpose of

conducting a teach-out if the teach-out is approved by the institution's accrediting agency. The institution that conducts the teachout under this provision is permitted to establish a permanent additional location at the closed institution without having to satisfy the requirements for additional locations in sections 102(b)(1)(E) and 102(c)(1)(C) of the HEA--i.e., that a proprietary institution or a postsecondary vocational institution must have been in existence for two years to be eligible--and without assuming the liabilities of the closed institution.

Note: One of the four new accrediting agency operating procedures added by the HEOA at section 496(c)(3) of the HEA requires accrediting agencies to approve teach-out plans submitted by institutions they accredit if the Department notifies the agency of an action against an institution in accordance with section 487(f) of the HEA; if the institution's accreditation is withdrawn, terminated or suspended; or if the institution intends to cease operations. This provision is being negotiated by Team III--Accreditation.

Updated information since 3/2-4 meetings: Section 668.14 would be amended to implement the requirement in section 487(f) of the HEA. In addition to the requiring an institution to submit a teach out plan (which would be defined in §600.2) to its accrediting agency whenever the Secretary initiates an LS or T or an emergency action against the institution, as required by statute, an institution would be required to submit a teach out plan when (1) the institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; or (2) the institution otherwise intends to cease operations.

Section 600.32 would implement section 498(k) of the HEA to provide that an institution that conducts a teach out for a closed institution whenever the Secretary initiates an LS or T or an emergency action against the institution may apply to have that site approved as an additional location, if the teach out plan was approved by the closed institution's accrediting agency. If the Department approves the institution to add the additional location, the "two-year rule" would not apply to the additional location, and the institution would not assume the liabilities of the closed institution. As a condition for approval, the Department may require that payments from the institution conducting the teach out to the owners of the closed institution, or related parties, be used to pay any liabilities owed by the closed institution.

Tentative agreement:

Regulatory language:

§600.2 General definitions.

The following definitions apply to terms used in this part:

* * *

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

§600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b) ~~and~~ (c) and (d) of this section, to qualify as an eligible location, an additional

location of an eligible institution must satisfy the applicable requirements of this section and §§600.4, 600.5, 600.6, 600.8, and 600.10.

(b) To qualify as an eligible location, an additional location is not required to satisfy the two-year requirement of §§600.5(a)(7) or 600.6(a)(6), unless—

(1) The location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and

(3) The institution from which the applicant institution acquired the assets of the location—

(i) Owes a liability for a violation of an HEA program requirement; and

(ii) Is not making payments in accordance with an agreement to repay that liability.

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of §600.5(a)(7) or §600.6(a)(6) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds; and

(3) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(d) (1) An institution that conducts a teach out at a site of a closed institution may apply to have that site approved as an additional location if-

(i) The closed institution ceased operations as result of an action taken by the Secretary to limit, suspend, or terminate the institution's participation under 34 CFR 600.41 or subpart G of this part, or a result of an emergency action taken by the Secretary under §668.83; and

(ii) The teach-out plan required under §668.14(b) (26) is approved by the closed institution's accrediting agency.

(2) (i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d) (1) of this section-

(A) Is not required to meet the two-year requirement of §600.5(a) (7) or §600.6(a) (6) for the additional location described in paragraph (d) (1) of this section; and

(B) Is not required to assume the liabilities of the closed institution as required by paragraph (c) (1) and (c) (2) of this section.

(ii) As a condition for approving an additional location under paragraph (d) (1) of this section, the Secretary may require that payments from the institution conducting the teach

out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

(~~e~~) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under §600.21.

§668.14 Program participation agreement.

* * * *

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

* * *

(26) In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83, the institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution, or the institution otherwise intends to cease operations, the institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency.

Statutory language:

Section 487. Program participation agreements.

* * * *

(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS.—

(1) IN GENERAL.—In the event the Secretary initiates the limitation, suspension, or termination of the participation of

an institution of higher education in any program under this title under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution's accrediting agency or association in compliance with section 496(c)(4) [should be 496(c)(6)], the Secretary's regulations on teachout plans, and the standards of the institution's accrediting agency or association.

(2) TEACH-OUT PLAN DEFINED.—In this subsection, the term 'teach-out plan' means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

Section 498. Eligibility and certification procedures.

* * * * *

(k) TREATMENT OF TEACH-OUTS AT ADDITIONAL LOCATIONS.—

(1) IN GENERAL.—A location of a closed institution of higher education shall be eligible as an additional location of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, for the purposes of a teachout described in section 487(f), if such teach-out has been approved by the institution's accrediting agency.

(2) SPECIAL RULE.—An institution of higher education that conducts a teach-out through the establishment of an additional location described in paragraph (1) shall be permitted to establish a permanent additional location at a closed institution and shall not be required—

(A) to meet the requirements of sections 102(b)(1)(E) and 102(c)(1)(C) for such additional location; or

(B) to assume the liabilities of the closed institution.

(for reference purposes)

Section 496. Recognition of accrediting agency or association.

* * * * *

(c) OPERATING PROCEDURES REQUIRED—No accrediting agency or association may be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this title, unless the agency or association—

* * *

(3) requires an institution to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

(A) the Department notifies the accrediting agency of an action against the institution pursuant to section 487(f);

(B) the accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; or

(C) the institution notifies the accrediting agency that the institution intends to cease operations;

* * *

~~(4)~~ (6) requires that teach-out agreements among institutions are subject to the approval by the accrediting agency or association consistent with standards promulgated by such agency or association;

Issue paper #18

Origin: HEOA

Issue: Definition of baccalaureate "liberal arts" programs offered by proprietary schools

Statutory cites: Section 102(b) of the HEA

Regulatory cites: §600.5

DCL GEN-08-12 cite: Pages 23-24

Summary of issue: Effective July 1, 2010, the definition of "proprietary institution of higher education" is amended to add institutions that provide a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier.

As the language in section 102(b)(1)(A)(i) of the HEA is not new, in Dear Colleague letter GEN-08-12, the Department noted that this change does not affect the eligibility of current programs or alter the method used by the Secretary in determining the "recognized occupations" as required by section 102(b)(1)(A)(i) of the HEA.

Dear Colleague letter GEN-08-12 also noted that, pending negotiated rulemaking, the Secretary will regard a program as satisfying the "liberal arts" term of the statute if the Secretary determines, and the institution's recognized regional accreditation agency or organization affirms, that it is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including

only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

- a program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study;
- an undifferentiated program that includes instruction in the general arts or general science;
- a program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy and religion; and
- any single instructional program in liberal arts and sciences, general studies and humanities not listed above.

Updated information since 3/2-4 meetings: Section 600.5 would be amended to add to the definition of "proprietary institution of higher education" institutions that provide a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. In addition, a new paragraph (i) would be added to §600.5 to include a definition of a "program leading to a baccalaureate degree in liberal arts." The definition would require that the institution's recognized regional accreditation agency or organization determine that the program is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more generally-accepted instructional categories comprising such programs. The categories are from the U.S.

Department of Education's National Center for Education Statistics' (NCES) Classification of Instructional Programs (CIP), the federal government statistical standard on instructional program classifications. Specifically, the instructional categories are from the description of CIP 24, Liberal Arts and Sciences, General Studies and Humanities, except that it excludes independently-designed programs, individualized programs, and unstructured studies.

Tentative agreement:

Regulatory language:

§600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution that—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

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

(ii) (A) Provides a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (i) of this section, and has provided that program since January 1, 2009; and

(B) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier;

* * *

(i) For purposes of this section, a "program leading to a baccalaureate degree in liberal arts" is a program that the institution's recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies--

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study;

(2) An undifferentiated program that includes instruction in the general arts or general science;

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy and religion; and

(4) Any single instructional program in liberal arts and sciences, general studies and humanities not listed above.

Statutory Language:

Section 102. Definition of institution of higher education for purposes of Title IV programs.

* * * * *

(b) PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—

(1) PRINCIPAL CRITERIA.—For the purpose of this section, the term “proprietary institution of higher education” means a school that—

~~(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;~~

(A) (i) provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or

(ii) (I) provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and

(II) is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier;

Issue Paper #19

Origin: HEOA

Issue: Peer-to-peer file sharing/copyrighted material

Statutory cites: Section 485(a) and 487 of the HEA

Regulatory cites: §668.14 and §668.43

DCL GEN-08-12 cite: Pages 72 and 95

Summary of issue: Effective August 14, 2008, the HEOA adds a new requirement to section 487 of the HEA (Program Participation Agreement) under which an institution must certify that it has developed plans to effectively combat the unauthorized distribution of copyrighted material (including through the use of a variety of technology-based deterrents) and will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

In addition, as part of the required information an institution must make available to prospective and enrolled students the HEOA adds new subparagraph (P) to section 485(a)(1) of the HEA to require a description of institutional policies and sanctions related to copyright infringement. This description includes (1) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject the students to civil and criminal liabilities; (2) a summary of the penalties for violation of Federal copyright laws; and (3) the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of

copyrighted materials using the institution's information technology system. This provision is also effective August 14, 2008.

Updated information since 3/2-4 meetings:

Generally, in drafting these proposed regulations, the Department sought to stay as close as possible to the actual language of the statute. In recognition of the diversity among institutions and evolving technology, we chose not to mandate in regulation the use of specific technologies or measures. At the same time, we sought to give meaning to the statute in a way that provides clarity so that institutions understand what is expected of them to comply with these provisions.

Program participation agreement

Section 668.14(b)(27)(i) would implement section 487(a)(29)(A) of the HEA to require an institution, as a condition of participation in a Title IV program, to agree that it has developed and implemented plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network without unduly interfering with the educational and research use of the network.

The proposed language reflects general agreement by the subcommittee that the plan should include the use of technology-based deterrents, an educational component, a description of the institution's procedures for handling copyright infringement, and a required periodic review of the plan. Institutions would not be required to use specific types of technology-based deterrents. To assist with implementation, the four categories of technology-based deterrents listed in the conference report to the HEOA could be listed in the preamble to the regulations. Institutions would be required to demonstrate the effectiveness

of their plan by using measureable criteria. Institutions would be allowed to determine the most appropriate measure or measures.

Section 668.14(b)(27)(ii) would implement section 487(a)(29)(B) of the HEA, requiring that institutions, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material. The proposed language also reflects general agreement among the subcommittee members that institutions (1) be required to periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) provide the results of the review.

Consumer information

The Department is proposing to implement section 485(a)(1)(P) of the HEA by using, as much as practicable, the existing framework and definitions found in current regulations. As the statute requires that most institutional information be made readily available upon request to prospective and enrolled students, rather than provided to them on a one-to-one basis, information regarding institutional policies and sanctions related to copyright infringement would be handled in the same manner (i.e., included in the list of institutional information provided upon request pursuant to §668.43). This information would be required to (1) explicitly inform enrolled and prospective students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) delineate the institution's policies with respect to unauthorized peer-to-peer file sharing, including

disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system. As the statute does not require disclosure of this information to employees of the institution, this would not be mandated in the regulations. However, institutions could choose to make such information available to employees and the general public.

As current §668.41(c) requires an institution to provide to enrolled students an annual notice containing a list and brief description of the consumer information it must disclose and the procedures for obtaining this consumer information, an institution would be required to add to this list the fact that it must make readily available information regarding institutional policies and sanctions related to copyright infringement. Per the current definition of "notice" in §668.41(a), institutions must provide this annual notice on a one-to-one basis through a direct individual notice to each enrolled student. This notice must be made through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail or electronic mail. Posting on Internet or Intranet websites does not constitute notice. If the institution discloses the consumer information by posting the information on a website, it must include in the notice the exact electronic address at which the information is posted, and a statement that the institution will provide a paper copy of the information on request.

The current definition of "prospective student" in §668.41(a) would be used—i.e., an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Tentative agreement:

Regulatory language:

§668.14 Program participation agreement.

* * * * *

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

* * *

(27) The institution—

(i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—

(A) The use of technology-based deterrents;

(B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material;

(C) Procedures for handling copyright infringements, including disciplinary procedures; and

(D) Procedures for periodically reviewing the effectiveness of the plan to combat the unauthorized distribution of copyrighted materials by users of the institutions network based on measureable criteria which may include the number of copyright infringement notices received and the rate of recidivism.

(ii) Will, in consultation with the chief technology officer or other designated officer of the institution —

(A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material;

(B) Make available the results of the review in paragraph (b) (27) (ii) (A) to its students, and employees through a website and/or other means; and

(C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution.

§668.43 Institutional information.

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

* * *

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

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

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs the students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws; and

(iii) A description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

Statutory language:

SEC. 485. Institutional and Financial Assistance for Students.

(a) INFORMATION DISSEMINATION ACTIVITIES.—

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

* * *

(P) institutional policies and sanctions related to copyright infringement, including—

(i) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) a summary of the penalties for violation of Federal copyright laws; and

(iii) a description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system;

Section 487. Program participation agreements.

* * * * *

(a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

* * *

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

Issue Paper #20

Origin: HEOA

Issue: Institutional plans for improving the academic program

Statutory cites: Section 485(a) of the HEA

Regulatory cites: §668.43

DCL GEN-08-12 cite: Page 95

Summary of issue: As part of the required information an institution must make available to prospective and enrolled students, the HEOA adds to the existing description of the academic program any plans the institution has for improving the academic program. This provision was effective August 14, 2008.

Updated information since 3/2-4 meetings: Section 668.43 would be amended to add to the institutional information that an institution must make readily available upon request to enrolled and prospective students any plans by the institution for improving the academic program of the institution.

Tentative agreement:

Regulatory language:

§668.43 Institutional information.

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

* * *

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;~~and~~

(iii) The institution's faculty and other instructional personnel; and

(iv) Any plans by the institution for improving the academic program of the institution.

Statutory Language:

SEC. 485. Institutional and Financial Assistance for Students.

(a) INFORMATION DISSEMINATION ACTIVITIES.—

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

* * *

(G) the academic program of the institution, including (i) the current degree programs and other educational and training

programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic ~~program, and~~ program, (iii) the faculty and other instructional personnel, and (iv) any plans by the institution for improving the academic program of the institution;

Issue Paper # 21

Origin: HEOA

Issue: Leveraging Educational Assistance Partnership (LEAP)
Program Non-Federal Share

Statutory cites: Section 415C(b) (10) of the HEA

Regulatory cites: §692.10

DCL GEN-08-12 cite: None

Summary of issue: The HEA as amended by the HEOA provides that the non-Federal share of the amount of student grants or work-study jobs under the LEAP Program must be from State funds for the program and no longer requires the non-Federal share to come from a direct appropriation of State funds.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

§692.10 How does the Secretary allot funds to the States?

(a) (1) The Secretary allots to each State participating in the LEAP program an amount which bears the same ratio to the Federal LEAP funds appropriated as the number of students in that State who are "deemed eligible" to participate in the State's LEAP program bears to the total number of students in all States who are "deemed eligible" to participate in the LEAP program, except that no State may receive less than it received in fiscal year 1979 for the programs under this part.

(2) For the programs under this part, if the Federal ~~LEAP~~ funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal ~~LEAP~~ funds it received in fiscal year 1979, the Secretary allots to each State an amount

which bears the same ratio to the amount of Federal ~~LEAP~~ funds appropriated as the amount of Federal LEAP funds that State received in fiscal year 1979 bears to the amount of Federal LEAP funds all States received in fiscal year 1979 for the programs under this part.

(b) For the purpose of paragraph (a)(1) of this section, the Secretary determines the number of students "deemed eligible" to participate in a State's LEAP Program by dividing the amount of that State's LEAP expenditures, including both its Federal allotment and the State ~~appropriated~~ funds matching the allotment, by the average grant award per student of all participating States. The Secretary determines the "average grant award per student" by dividing the total number of student recipients for all States into the total amount of LEAP expenditures for all States, including both the Federal allotments and the State ~~appropriated~~ funds matching those allotments. In making this determination, the Secretary uses the most current available data reported by each State.

Statutory Language:

(10) For any academic year beginning after June 30, 1987, provides the non-Federal share of the amount of student grants or work-study jobs under this subpart through a direct appropriation of state funds for the program under this subpart; and

Issue Paper # 22

Origin: HEOA

Issue: Notification to Students of Source of LEAP Grant Funding

Statutory cites: Section 415C(b) (11) of the HEA

Regulatory cites: §692.21

DCL GEN-08-12 cite: Page 110

Summary of issue: The HEA as amended by the HEOA requires the State program to notify eligible students that grants are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, for LEAP Grants to students made under GAP, other contributing partners.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

§692.21 What requirements must be met by a State program?

To receive a payment under the LEAP Program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency;

(b) Provides assistance only to students who meet the eligibility requirements in §692.40;

(c) Provides that assistance under this program to a full-time student will not be more than **the lesser of \$12,500 ~~5,000~~ or the student's cost of attendance under section 472 of the HEA** for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined

annually by the State on the basis of standards that the State establishes and the Secretary approves;

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in accordance with paragraph (d) of this section;

(f) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of-

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution, a reasonable portion of the State's allocation must be awarded to those students;

(h) Provides that-

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year;
and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under the LEAP Program represents an additional amount for grants and work-study jobs for students attending institutions over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under the LEAP Program;

(i) Provides for State expenditures under the State program of an amount that is not less than--

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years;

(j) Provides that, to the extent practicable, the proportion of the funds awarded to independent students in the LEAP Program shall be the same proportion of funds awarded to independent students as is in the State program or programs of which the State's LEAP Program is a part; ~~and~~

~~(k) Notifies eligible students that the grants are--~~

~~(1) Leveraging Educational Assistance Partnership Grants; and~~

~~(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and~~

~~(k1) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under the LEAP Program.~~

Statutory Language:

~~(11) provides notification to eligible students that such grants are--~~

(A) Leveraging Educational Assistance Partnership Grants;
and

(B) funded by the Federal Government, the State, and, where applicable, other contributing partners.

Issue Paper #23

Origin: HEOA

Issue: GAP Program Activities: Partnerships

Statutory cites: Section 415E(c)(4) and (d) of the HEA

Regulatory cites: §§692.94, 692.100, 692.101, and 692.111

DCL GEN-08-12 cite: Page 113

Summary of issue:

Partnership

Each State receiving an allotment must use the funds to establish a partnership to award LEAP Grants under GAP to eligible low-income students in order to increase the amount of financial assistance these students receive under these programs for undergraduate education expenses.

Roles of Partners

State agency

A State agency that is in a partnership receiving a GAP allotment serves as the primary administrative unit for the partnership. The State agency:

- provides or coordinates non-Federal share funds and coordinates activities among partners;
- encourages each institution of higher education in the State to participate in the partnership;
- makes determinations and early notifications of assistance;
- annually reports to the Secretary on the partnership's progress in meeting the purpose of GAP; and

- may provide early information and intervention, mentoring, or outreach programs.

Degree-granting institution of higher education

An institution in a partnership:

- must recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency;
- must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;
- must assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and
- may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

Early intervention programs

An early information and intervention, mentoring, or outreach program that is in a partnership must provide direct services, support, and information to participating students.

Philanthropic organization or private corporation

A philanthropic organization or private corporation that is in a partnership must provide funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.94 on page 2 of Appendix A.

See §692.100 on page 2-3 of Appendix A.

See §692.101 on page 4 of Appendix A.

See §692.111 on page 5-7 of Appendix A.

Statutory Language:

(c) * * *

* * * * *

(4) ROLES OF PARTNERS.—

(A) STATE AGENCY.—A State agency that is in a partnership receiving an allotment under this section—

(i) shall—

(I) serve as the primary administrative unit for the partnership;

(II) provide or coordinate non-Federal share funds, and coordinate activities among partners;

(III) encourage each institution of higher education in the State to participate in the partnership;

(IV) make determinations and early notifications of assistance as described under subsection (d) (2); and

(V) annually report to the Secretary on the partnership's progress in meeting the purpose of this section; and

(ii) may provide early information and intervention, mentoring, or outreach programs.

(B) DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION.—A degree-granting institution of higher education that is in a partnership receiving an allotment under this section—

(i) shall—

(I) recruit and admit participating qualified students and provide such additional institutional grant aid to participating students as agreed to with the State agency;

(II) provide support services to students who receive grants for access and persistence under this section and are enrolled at such institution; and

(III) assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(ii) may provide funding for early information and intervention, mentoring, or outreach programs or provide such services directly.

(C) PROGRAMS.—An early information and intervention, mentoring, or outreach program that is in a partnership receiving an allotment under this section shall provide direct services, support, and information to participating students.

(D) PHILANTHROPIC ORGANIZATION OR PRIVATE CORPORATION.— A philanthropic organization or private corporation that is in a partnership receiving an allotment under this section shall provide funds for grants for access and persistence for participating students, or provide funds or support for early information and intervention, mentoring, or outreach programs.

(d) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—

(A) ESTABLISHMENT OF PARTNERSHIP.—Each State receiving an allotment under this section shall use the funds to establish a partnership to award grants for access and persistence to eligible low-income students in order to increase the amount of

financial assistance such students receive under this subpart
for undergraduate education expenses.

Issue paper #24

Origin: HEOA

Issue: GAP Program Activities: Awards

Statutory cites: Section 415E(d) of the HEA

Regulatory cites: §§692.111(b) and 692.120

DCL GEN-08-12 cite: Page 114

Summary of issue:

LEAP Grant under GAP amount

The amount of a LEAP Grant under GAP awarded by a State to a student must be not less than the average undergraduate tuition and mandatory fees at the public institutions of higher education in the State where the student resides that are of the same type of institution as the institution of higher education the student attends minus other Federal and State aid the student receives.

Institutions of higher education

A State receiving a GAP allotment may restrict the use of LEAP Grants under GAP by awarding the grants only to students attending institutions of higher education that are participating in the partnership. If a State provides LEAP Grants not awarded under GAP to students attending institutions of higher education located in another State, grants awarded under GAP may be used at institutions of higher education located in another State.

Student eligibility

A student must meet one of the following:

- The student meets at least two of the following criteria, with priority given to students meeting all of the following criteria:
 - has an EFC equal to zero, as determined under the Title IV need analysis, or a comparable alternative based upon the State's approved criteria for LEAP;
 - qualifies for the State's maximum undergraduate award for LEAP; or
 - is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as recognized by the State agency administering LEAP and GAP.
- The student is receiving, or has received, a LEAP Grant under GAP, and is compliant with the requirements for the duration of an award.

Grant award

Once a student, including those students who have received an early notification from the State, applies for admission to an institution that is a partner in the partnership, files a FAFSA and any related State form, and is determined by the State to meet the student eligibility requirements in the prior section, the State must issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts and inform the student that payment of the grant award amounts is subject to certification of enrollment and award eligibility by the student's institution of higher education.

Duration of an award

An eligible student who receives a LEAP Grant under GAP receives an award for each year of the student's undergraduate education in which the student remains eligible for assistance under Title IV, including meeting the Title IV satisfactory academic progress standards, and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to degree completion.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.111(b) on page 5 of Appendix A.

See §692.120 on page 8-9 of Appendix A.

Statutory Language:

(d) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—

(A) * * *

(B) AMOUNT OF GRANTS.—The amount of a grant for access and persistence awarded by a State to a student under this section shall be not less than—

(i) the average undergraduate tuition and mandatory fees at the public institutions of higher education in the State where the student resides that are of the same type of institution as the institution of higher education the student attends; minus

(ii) other Federal and State aid the student receives.

(C) SPECIAL RULES.—

(i) PARTNERSHIP INSTITUTIONS.—A State receiving an allotment under this section may restrict the use of grants for

access and persistence under this section by awarding the grants only to students attending institutions of higher education that are participating in the partnership.

(ii) OUT-OF-STATE INSTITUTIONS.—If a State provides grants through another program under this subpart to students attending institutions of higher education located in another State, grants awarded under this section may be used at institutions of higher education located in another State.

(2) ***

(3) ELIGIBILITY.—In determining which students are eligible to receive grants for access and persistence, the State shall ensure that each such student complies with the following subparagraph (A) or (B):

(A) Meets not less than two of the following criteria, with priority given to students meeting all of the following criteria:

(i) Has an expected family contribution equal to zero, as determined under part F, or a comparable alternative based upon the State's approved criteria in section 415C(b) (4).

(ii) Qualifies for the State's maximum undergraduate award, as authorized under section 415C(b).

(iii) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as recognized by the State agency administering activities under this section.

(B) Is receiving, or has received, a grant for access and persistence under this section, in accordance with paragraph (5).

(4) GRANT AWARD.—Once a student, including those students who have received early notification under paragraph (2) from the State, applies for admission to an institution that is a partner in the partnership, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State under paragraph (3), the State shall—

(A) issue the student a preliminary award certificate for a grant for access and persistence with estimated award amounts; and

(B) inform the student that payment of the grant for access and persistence award amounts is subject to certification of enrollment and award eligibility by the institution of higher education.

(5) DURATION OF AWARD.—An eligible student who receives a grant for access and persistence under this section shall receive such grant award for each year of such student's undergraduate education in which the student remains eligible for assistance under this title, including pursuant to section 484(c), and remains financially eligible as determined by the State, except that the State may impose reasonable time limits to degree completion.

Issue Paper #25

Origin: HEOA

Issue: GAP Program Activities: Early Notification

Statutory cites: Section 415E(d)(2) of the HEA

Regulatory cites: §692.111(d)

DCL GEN-08-12 cite: Pages 114-115

Summary of issue: Each State receiving a GAP allotment must annually notify low-income students in grades seven through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend an institution of higher education.

The notice must include:

- Information about early information and intervention, mentoring, or outreach programs available to the student;
- Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;
- An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;
- A nonbinding estimate of the total amount of financial aid that a low-income student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of

aid from the major Federal and State financial aid programs;

- An explanation that the eligibility requirements a student must meet to be eligible for a LEAP Grant under GAP including graduating from secondary school and enrolling in a partner institution or an eligible out-of-State institution;
- Information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of a LEAP Grant under GAP; and
- Instructions on how to apply for a LEAP Grant under GAP and an explanation that a student must file a FAFSA to be eligible for a LEAP Grant under GAP and assistance from other Federal and State financial aid programs.

The notification may include a disclaimer that LEAP Grants under GAP are contingent on (a) a student's financial eligibility at the time of the student's enrollment at an institution of higher education; (b) the annual Federal and State spending for higher education; and (c) other aid received by the student at the time of the student's enrollment at an institution of higher education.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.111(d) on page 6 of Appendix A.

Statutory Language:

(2) EARLY NOTIFICATION.-

(A) IN GENERAL.—Each State receiving an allotment under this section shall annually notify low-income students in grades seven through 12 in the State, and their families, of their potential eligibility for student financial assistance, including an access and persistence grant, to attend an institution of higher education.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A)—

(i) shall include—

(I) information about early information and intervention, mentoring, or outreach programs available to the student;

(II) information that a student's eligibility for a grant for access and persistence is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(III) an explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a grant for access and persistence and other student aid programs;

(IV) a nonbinding estimate of the total amount of financial aid that a low-income student with a similar income level may expect to receive, including an estimate of the amount of a grant for access and persistence and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(V) an explanation that in order to be eligible for a grant for access and persistence, at a minimum, a student shall—

(aa) meet the requirement under paragraph (3);

(bb) graduate from secondary school; and

(cc) enroll at an institution of higher education—

(AA) that is a partner in the partnership; or

(BB) with respect to which attendance is permitted under subsection (d) (1) (C) (ii);

(VI) information on any additional requirements (such as a student pledge detailing student responsibilities) that the State may impose for receipt of a grant for access and persistence under this section; and

(VII) instructions on how to apply for a grant for access and persistence and an explanation that a student is required to file a Free Application for Federal Student Aid authorized under section 483(a) to be eligible for such grant and assistance from other Federal and State financial aid programs; and

(ii) may include a disclaimer that grant awards for access and persistence are contingent on—

(I) a determination of the student's financial eligibility at the time of the student's enrollment at an institution of higher education that is a partner in the partnership or qualifies under subsection (d) (1) (C) (ii);

(II) annual Federal and State spending for higher education; and

(III) other aid received by the student at the time of the student's enrollment at such institution of higher education.

Issue paper #26

Origin: HEOA

Issue: Applicability of LEAP Program Requirements

Statutory cites: Section 415E(g) of the HEA

Regulatory cites: §§692.94(a)(4), 692.100(h) and 692.110

DCL GEN-08-12 cite: Page 110

Summary of issue: The HEOA provides that LEAP Program requirements will apply to GAP to the extent that they are not inconsistent with GAP requirements.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.94(a)(4) on page 2 of Appendix A.

See §692.100(h) on page 4 of Appendix A.

See §692.110 on pages 4-5 of Appendix A.

Statutory Language:

(g) APPLICABILITY RULE.—The provisions of this subpart that are not inconsistent with this section shall apply to the program authorized by this section.

Issue Paper #27

Origin: HEOA

Issue: GAP Allotment: Application

Statutory cites: Section 415E(c) of the HEA

Regulatory cites: §§692.94 and 692.100

DCL GEN-08-12 cite: Pages 112-113

Summary of issue: To receive a GAP allotment, a State must submit an application at such time, in such manner, and containing such information as the Secretary may require.

An application on behalf of a partnership that must include the following information:

- A description of the State's plan for using the allotted funds.
- An assurance that the State will provide matching funds, in cash or in-kind, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the program. A State that uses non-Federal funds to create or expand partnerships, in which partners match State funds for student scholarships, may apply the matching funds from those entities toward fulfilling the State's matching non-Federal share.
- An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA.
- An assurance that early information and intervention, mentoring, or outreach programs exist within the State or

that there is a plan to make these programs widely available.

- A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this section.
- A description of the steps the State will take to ensure that students who receive a LEAP Grant under GAP persist to degree completion.
- An assurance that the State has a method in place, such as acceptance of the Title IV automatic zero EFC, to identify eligible low-income students and award State grant aid to such students.
- An assurance that the State will provide notification to eligible low-income students that grants under GAP are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

The State agency that submits an application for GAP must be the same agency that submits an application for LEAP.

A State agency must apply in partnership with:

- At least one public and one private degree-granting institution of higher education that are located in the State, if applicable;
- New or existing early information and intervention, mentoring, or outreach programs located in the State; and

- At least one philanthropic organization located in, or that provides funding in, the State or private corporation located in, or that does business in, the State.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.94 on page 2 of Appendix A.

See §692.100 on pages 2-4 of Appendix A.

Statutory Language:

(c) Application for Allotment.--

(1) In general.--

(A) Submission.--A State that desires to receive an allotment under this section on behalf of a partnership described in paragraph (3) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) Content.--An application submitted under subparagraph (A) shall include the following:

(i) A description of the State's plan for using the allotted funds.

(ii) An assurance that the State will provide matching funds, in cash or in kind, from State, institutional, philanthropic, or private funds, of not less than 33.33 percent of the cost of carrying out the activities under subsection (d). The State shall specify the methods by which matching funds will be paid. A State that uses non-Federal funds to create or expand partnerships with entities described in subsection (a)(1), in

which such entities match State funds for student scholarships, may apply such matching funds from such entities toward fulfilling the State's matching obligation under this clause.

(iii) An assurance that the State will use funds provided under this section to supplement, and not supplant, Federal and State funds available for carrying out the activities under this title.

(iv) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make such programs widely available.

(v) A description of the organizational structure that the State has in place to administer the activities under subsection (d), including a description of how the State will compile information on degree completion of students receiving grants under this section.

(vi) A description of the steps the State will take to ensure that students who receive grants under this section persist to degree completion.

(vii) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution determination described in section 479(c), to identify eligible low-income students and award State grant aid to such students.

(viii) An assurance that the State will provide notification to eligible low-income students that grants under this section are--

(I) Leveraging Educational Assistance Partnership Grants;
and

(II) funded by the Federal Government and the State, and, where applicable, other contributing partners.

(2) State agency.--The State agency that submits an application for a State under section 415C(a) shall be the same State agency that submits an application under paragraph (1) for such State.

(3) Partnership.--In applying for an allotment under this section, the State agency shall apply for the allotment in partnership with--

(A) not less than one public and one private degree-granting institution of higher education that are located in the State, if applicable;

(B) new or existing early information and intervention, mentoring, or outreach programs located in the State; and

(C) not less than one--

(i) philanthropic organization located in, or that provides funding in, the State; or

(ii) private corporation located in, or that does business in, the State.

Issue Paper #28

Origin: HEOA

Issue: GAP Allotment: Determination

Statutory cites: Section 415E(b), 415E(g), and 415B of the
HEA

Regulatory cites: §692.110

DCL GEN-08-12 cite: Page 111

Summary of issue: The Secretary makes an allotment to each State that submits an application to meet the costs of the Federal share of the State's GAP program.

Under section 415(g) of the HEA, LEAP provisions that are not inconsistent with GAP program requirements apply to GAP. Section 415B of the HEA sets forth the allotment formula for the subpart.

In making a continuation award for a State that continues to meet the specifications in the State's approved application, the Secretary makes an allotment to the State that is not less than the allotment made to the State in the previous year.

The Secretary gives priority to a State that applies for an allotment in partnerships with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See subpart B, §692.70 on page 1 of Appendix A.

See §692.110 on pages 4-5 of Appendix A.

Statutory Language:

SEC. 4415E

* * * * *

(b) Allotments to States.--

(1) In general.--

(A) Authorization.--From sums reserved under section 415A(b) (2) for each fiscal year, the Secretary shall make an allotment to each State that submits an application for an allotment in accordance with subsection (c) to enable the State to pay the Federal share, as described in paragraph (2), of the cost of carrying out the activities under subsection (d).

(B) Determination of allotment.--In making allotments under subparagraph (A), the Secretary shall consider the following:

(i) Continuation of award.--If a State continues to meet the specifications established in such State's application under subsection (c), the Secretary shall make an allotment to such State that is not less than the allotment made to such State for the previous fiscal year.

(ii) Priority.--The Secretary shall give priority in making allotments to States that meet the requirements described in paragraph (2) (B) (ii).

(2) Federal share.--

(A) In general.--The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year shall not exceed 66.66 percent.

(B) Different percentages.--The Federal share under this section shall be determined in accordance with the following:

(i) The Federal share of the cost of carrying out the activities under subsection (d) shall be 57 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and--

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(ii) The Federal share of the cost of carrying out the activities under subsection (d) shall be 66.66 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, and--

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(C) Non-federal share.--

(i) In general.--The non-Federal share under this section may be provided in cash or in kind, fairly evaluated.

(ii) In-kind contribution.--For the purpose of calculating the non-Federal share under this subparagraph, an in-kind contribution is a non-cash contribution that--

(I) has monetary value, such as the provision of--

(aa) room and board; or

(bb) transportation passes; and

(II) helps a student meet the cost of attendance at an institution of higher education.

(iii) Effect on need analysis.--For the purpose of calculating a student's need in accordance with part F, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student's parent.

* * * * *

(g) APPLICABILITY RULE.--The provisions of this subpart that are not inconsistent with this section shall apply to the program authorized by this section.

SEC. 415B. [20 U.S.C. 1070c-1] ALLOTMENT AMONG STATES.

(a) ALLOTMENT BASED ON NUMBER OF ELIGIBLE STUDENTS IN ATTENDANCE.--

(1) From the sums appropriated pursuant to section 415A(b) (1) and not reserved under section 415A(b) (2) for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such sums as the number of students who are deemed eligible in such State for participation in the grant program authorized by this subpart bears to the total number of such students in all the States, except that no State shall receive less than the State received for fiscal year 1979.

(2) For the purpose of this subsection, the number of students who are deemed eligible in a State for participation in the grant program authorized by this subpart, and the number of

such students in all the States, shall be determined for the most recent year for which satisfactory data are available.

(b) REALLOTMENT.—The amount of any State's allotment under subsection (a) for any fiscal year which the Secretary determines will not be required for such fiscal year for the leveraging educational assistance partnership program of that State shall be available for reallocation from time to time, on such dates during such year as the Secretary may fix, to other States in proportion to the original allotments to such States under such part for such year, but with such proportionate amount for any of such States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year for carrying out the State plan. The total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this part during a year from funds appropriated pursuant to section 415A(b)(1) shall be deemed part of its allotment under subsection (a) for such year.

(c) ALLOTMENTS SUBJECT TO CONTINUING COMPLIANCE.—The Secretary shall make payments for continuing incentive grants only to States which continue to meet the requirements of section 415C(b).

Issue Paper #29

Origin: HEOA

Issue: Matching

Statutory cites: 415E(b) (2), (h), and (i) of the HEA

Regulatory cites: §692.113

DCL GEN-08-12 cite: Pages 111-112

Summary of issue:

Matching funds

A State may provide the non-Federal share in cash or in-kind, fairly evaluated. An in-kind contribution is a noncash contribution that has monetary value, such as the provision of room and board or transportation passes, and helps a student meet the cost of attendance at an institution of higher education.

Non-Federal share

The Federal share of the program costs may not exceed 66.66 percent.

The Federal share of the program costs in a State is 57 percent in the case of a State that is in partnership with degree-granting institutions of higher education in the State whose combined fulltime enrollment represents *less than a majority* of all students attending institutions in the State and with philanthropic organizations that are located in, or that provide funding in, the State or private corporations that are located in, or that do business in, the State.

The Federal share of the program costs in a State is 66.66 percent in the case of a State that is in partnership with degree-granting institutions of higher education in the State

whose combined full-time enrollment represents a *majority* of all students attending institutions in the State and with philanthropic organizations that are located in, or that provide funding in, the State or private corporations that are located in, or that do business in, the State.

Maintenance-of-effort requirement

Each State receiving a GAP allotment for a fiscal year must provide the Secretary with an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for activities authorized for GAP for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for the activities for the second preceding fiscal year.

Base-year requirement

Notwithstanding the maintenance-of-effort requirement, for purposes of determining a State's share of the cost of the GAP program activities, the State must consider only those expenditures from non-Federal sources that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999 (including any such assistance provided under LEAP and GAP).

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.113 on pages 7-8 of Appendix A.

Statutory Language:

(b) * * *

(2) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of carrying out the activities under subsection (d) for any fiscal year shall not exceed 66.66 percent.

(B) DIFFERENT PERCENTAGES.—The Federal share under this section shall be determined in accordance with the following:

(i) The Federal share of the cost of carrying out the activities under subsection (d) shall be 57 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(ii) The Federal share of the cost of carrying out the activities under subsection (d) shall be 66.66 percent if a State applies for an allotment under this section in partnership with any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State, and—

(I) philanthropic organizations that are located in, or that provide funding in, the State; or

(II) private corporations that are located in, or that do business in, the State.

(C) NON-FEDERAL SHARE.—

(i) IN GENERAL.—The non-Federal share under this section may be provided in cash or in kind, fairly evaluated.

(ii) IN-KIND CONTRIBUTION.—For the purpose of calculating the non-Federal share under this subparagraph, an in-kind contribution is a non-cash contribution that—

(I) has monetary value, such as the provision of—

(aa) room and board; or

(bb) transportation passes; and

(II) helps a student meet the cost of attendance at an institution of higher education.

(iii) EFFECT ON NEED ANALYSIS.—For the purpose of calculating a student's need in accordance with part F, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student's parent.

* * * *

(h) MAINTENANCE OF EFFORT REQUIREMENT.—Each State receiving an allotment under this section for a fiscal year shall provide the Secretary with an assurance that the aggregate amount expended per student or the aggregate expenditures by the State, from funds derived from non-Federal sources, for the authorized activities described in subsection (d) for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for the activities for the second preceding fiscal year.

(i) SPECIAL RULE.—Notwithstanding subsection (h), for purposes of determining a State's share of the cost of the authorized activities described in subsection (d), the State shall consider only those expenditures from non-Federal sources

that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999 (including any such assistance provided under this subpart).

Issue Paper #30

Origin: HEOA

Issue: Statutory and regulatory relief

Statutory cites: 415E(f) of the HEA

Regulatory cites: §692.130

DCL GEN-08-12 cite: Page 115

Summary of issue: The Secretary may grant, upon the request of an institution of higher education that is in a partnership with a 66.66 percent Federal share, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

See §692.130 on page 9 of Appendix A.

Statutory Language:

(f) STATUTORY AND REGULATORY RELIEF FOR INSTITUTIONS OF HIGHER EDUCATION.—The Secretary may grant, upon the request of an institution of higher education that is in a partnership described in subsection (b) (2) (B) (ii) and that receives an allotment under this section, a waiver for such institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

Issue Paper #31

Origin: HEOA

Issue: Estimated financial assistance

Statutory cites: 415E(b) (2) (C) (iii) of the HEA

Regulatory cites: None

DCL GEN-08-12 cite: Page 112

Summary of issue: For purposes of calculating a student's need in accordance with title IV, part F of the HEA, an in-kind contribution is not considered an asset or income of the student or the student's parent.

Updated information since 3/2-4 meetings:

Tentative agreement:

Regulatory Language:

None.

Statutory Language:

(iii) EFFECT ON NEED ANALYSIS.—For the purpose of calculating a student's need in accordance with part F, an in-kind contribution described in clause (ii) shall not be considered an asset or income of the student or the student's parent.