



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

**Issue Paper 2: Standards of Administrative Capability
Session 3: March 14-18, 2022**

Issue: Standards of Administrative Capability
Statutory cites: §498(a) of the Higher Education Act of 1965, as amended
Regulatory cites: 34 CFR 668.16

Proposed Regulations Redline

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution ~~shall~~must demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution -

* * *

(h) Provides adequate financial aid counseling with clear and accurate information to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding -

(1) The source and amount of each type of aid offered, the nature of the aid and whether it must be earned or repaid, and instructions and deadlines for accepting, declining, or adjusting award amounts;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Provides adequate career services to eligible students who receive Title IV, HEA program assistance. In determining whether an institution provides adequate career services, the Secretary considers –

(1) The share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation;

(2) The number and distribution of career services staff;

(3) The career services the institution has publicized to its students; and

(4) The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution;

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(j) ~~Makes a reasonable effort to provide~~ Provides students with accessible clinical or externship opportunities related to and required for completion of the credential or licensure in a recognized occupation within 45 days of the completion of other required coursework;

(k) ~~Disburses funds to students in a timely manner consistent with the students's needs, as required in 34 CFR 668.164, violations of which may be assessed using The Secretary does not consider the manner of disbursements to be consistent with students' needs if, among other conditions—~~

(1) ~~The Secretary is aware of multiple relevant~~ student complaints;

(2) ~~The institution has~~ high rates of withdrawals attributable to delays in disbursements;

(3) ~~The institution has delayed~~ disbursements ~~delayed~~ until after the withdrawal date requirements in 34 CFR 668.22(b) and (c); or

(4) ~~The institution has delayed~~ disbursements ~~delayed~~ with the effect of ensuring an institution passes the 90/10 ratio; ~~or other methods;~~

(jii) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(m) ~~For an institution that offers~~ gainful employment (GE) programs subject to the requirements in subpart Q of this part, ~~receives and--~~

(1) ~~At least half of its total Title IV revenue in the most recent award year in its eligible programs is not from such programs that are "failing" "passing" under subpart Q, and~~

(2) ~~has At least half of its full-time equivalent title IV-receiving regular enrolled students are not enrolled in such programs that are "failing" "passing" under subpart Q;~~

(nm) Does not engage in misrepresentations, including as defined in subpart F of this part, or aggressive recruitment, including as defined in subpart R of this part;

(o) Has not been placed under subject to a significant negative action by a State or Federal agency or an accrediting agency and has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the school institution;

(jnp) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program and that are identified in -

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(keq) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises substantial control as defined in 668.174(c)(3), that is--

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(1) ~~Has been d~~ebarrred or suspended under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; ~~or~~

(2) ~~Is e~~ngaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; ~~or~~

~~(3) Has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or~~

~~(4) Is aA current or former principal or affiliate (as those terms are defined in 2 CFR parts 180 and 3485), or any individual who exercises or exercised substantial control as defined in 668.174(c)(3), of another institution director, officer, executive, or principal of an institution whose misconduct or closure resulted in-contributed to liabilities to the Ffederal Ggovernment in excess of 5 percent of its title IV, HEA program funds.~~

~~(pr)~~ For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period -

(1) Withdrew from, dropped out of, or were expelled from the institution; ~~and~~

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

~~(sem)~~

(1) Has a cohort default rate -

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)

(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph ~~(ms)~~(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c)

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except as provided in paragraphs (ms)(2)(ii) through (ms)(2)(iii), (ms)(2)(iv), and (ms)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (sm)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (ms)(2)(i) of this section -

(A) If it has timely filed a request for adjustment or appeal under §§ 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(1) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(2) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (ms)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (ms)(1)(ii) and (ms)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

(tra) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently;

(use) Participates in the electronic processes that the Secretary -

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the *Federal Register*; and

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

(1) Adequate procedures to evaluate the validity of a student's high school diploma completion must include--

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(i) Obtaining documentation from the high school that confirms the validity of the high school diploma, including at least one of the following—

(A) Transcripts;

(B) Written descriptions of course requirements; or

(C) Written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school; and

(ii) If the high school is regulated or overseen by a State agency, confirming with or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency.

(2) A high school diploma is not valid if it—

(i) ~~is not recognized or d~~Does not meet ~~the~~ requirements established by the appropriate State agency in ~~which the State where~~ the high school is located;

(ii) Has been determined to be invalid by the Department, the appropriate State agency in ~~which the State where~~ the high school was located, or through a court proceeding; ~~or~~

(iii) Was obtained from an entity that requires little or no ~~secondary instruction education~~ or coursework to obtain a high school diploma, including through a test that does not meet the requirements for a recognized equivalent of a high school diploma under 34 CFR 600.2~~;~~ ~~or~~

(iv) Was obtained from an entity that—

(A) Maintains a business relationship or is otherwise affiliated with the eligible institution at which the student is enrolled; and

(B) Is not accredited.