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A : Office of Postsecondary Education, Department of Education.

A : Final regulations.

A : The Secretary is improving integrity in the programs authorized

proprietary institution of higher education, and a postsecondary vocational institution to be considered legally authorized by the State;

- Defining a and establishing procedures that certain institutional accrediting agencies must have in place to determine whether an institution's assignment of a credit hour is acceptable;
- Modifying provisions to clarify whether and when an institution must award student financial assistance based on clock or credit hours and the standards for credit-to-clock-hour conversions;
- Modifying the provisions related to written arrangements between two or more eligible institutions that are owned or controlled by the same person or entity so that the percentage of the educational program that may be provided by the institution that does not grant the degree or certificate under the arrangement may not exceed 50 percent;
- Prohibiting written arrangements between an eligible institution and an ineligible institution that has had its certification to participate in title IV, HEA programs revoked or its application for recertification denied;
- Expanding provisions related to the information that an institution with a written arrangement must disclose to a student enrolled in a program affected by the arrangement, including, for example, the portion of the educational program that the institution that grants the degree or certificate is not providing;
- Revising the definition of to include TEACH Grants, Federal PLUS Loans, and Direct PLUS Loans;
- Codifying current policy that an institution must complete verification before the institution may exercise its professional judgment authority;
- Eliminating the 30 percent verification cap;
- Retaining the ability of institutions to select additional applicants for verification;
- Replacing the five verification items for all selected applicants with a targeted selection from items included in an annual notice published by the Secretary;
- Allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount that the student would receive under a title IV, HEA program;
- Codifying the Department's IRS Data Retrieval System Process, which allows an applicant to import income and other data from the IRS into an online FAFSA;
- Requiring the processing of changes and corrections to an applicant's FAFSA information;
- Modifying the provisions related to institutional satisfactory academic progress policies and the impact these policies have on a student's eligibility for title IV, HEA program assistance;
- Expanding the definition of - to allow, for a term-based program, repeated coursework taken in the program to count towards a full-time workload;
- Clarifying when a student is considered to have withdrawn from a payment period or period of enrollment for the purpose of calculating a return of title IV, HEA program funds;
- Clarifying the circumstances under which an institution is required to take attendance for the purpose of calculating a return of title IV, HEA program funds;
- Modifying the provisions for disbursing title IV, HEA program funds to ensure that certain students can obtain or purchase books and supplies by the seventh day of a payment period;
- Updating the definition of the term to reflect current usage;
- Establishing requirements for institutions to submit information on students who attend or complete programs that prepare students for gainful employment in recognized occupations; and
- Establishing requirements for institutions to disclose on their Web site and in promotional materials to prospective students, the on-time completion rate, placement rate, median loan debt, program cost, and other information for programs that prepare students for gainful employment in recognized occupations.

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation. As indicated in the **A** section, the regulations contained in subpart E of part 668, Verification and Updating of Student Aid Application Information are effective July 1, 2012.

While the Secretary has designated amended § 600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year eT*(arr cs the term)(may rei

higher education by helping to curtail fraud and abuse and would protect the interests of a diverse population of students who are seeking higher education for personal and professional growth. Some of the commenters also stated that the Secretary's proposed regulations would provide a level playing field that benefits the majority of institutions of higher education that are committed to sound academic and administrative practices.

D : The Department appreciates the numerous comments we received in support of the proposed regulations.

C :

Lastly, one commenter requested that the Department indicate in each section of the final regulations the types of institutions to which that specific section applies.

D , : The Department is aware that some institutions may have limited resources to implement some provisions of the final regulations and is committed to assisting these institutions in every way possible to ensure that all institutions can comply with program requirements. Several of the changes are to discrete areas of existing regulations rather than wholly new requirements. As such, institutions wishing to continue to participate in the title IV, HEA programs have already absorbed many of the administrative costs related to implementing these final regulations. Any additional costs are primarily due to new procedures that, while possibly significant in some cases, are a cost of continued program participation.

The Department believes that the benefits of these regulations for students, consumers, and taxpayers justify the burdens of institutional compliance, as discussed, in the Regulatory Impact Analysis in Appendix A. These regulations strengthen the Federal student aid programs by protecting students from aggressive or misleading recruiting practices and clarifying State oversight responsibilities, providing consumers with better information about the effectiveness of career colleges and training programs, and ensuring that only eligible students or programs receive aid.

We do not believe it is necessary to specifically indicate in each section

institution would have to obtain for each of these exclusions.

(2) Removing the requirement in § 668.8(g)(1)(iii) that a student must be employed, or have been employed, for 13 weeks and allowing students to find employment within 6 months from the last graduation date in the award year.

(3) Replacing the employer certification, income tax form, and Social Security provisions in § 668.8(g)(3) with other ways that an institution would verify that a student obtained gainful employment.

Several commenters suggested using the methodology developed by a national accrediting agency because the proposed method in § 668.8(g) does not take into consideration circumstances that would prevent graduates from seeking employment, such as health issues, military deployment or continuing education, or practical issues related to the employment of international or foreign students.

Several commenters stated it would be difficult, if not impossible, for these institutions to obtain the data needed to calculate placement rates. Some of these commenters supported the use of State-sponsored workforce data systems, but cautioned that many community colleges would not be able to obtain sufficiently detailed placement information through data matches with these systems to satisfy the proposed requirements. Other commenters noted that some States do not have workforce data systems, so institutions in those States would have to use the non preferred placement rate methodology under § 668.8(g). Many of the commenters believed the requirement to document employment on a case-by-case basis under § 668.8(g)(2) would be overly burdensome and labor intensive. Others opined that the placement provisions are counterproductive, claiming that a substantial number of community colleges eschewed participating in programs under the Workforce Investment Act because of placement rate requirements. On the other hand, another commenter supported the placement rate provisions and recommended that all institutions in a State participate in a workforce data system, if the State has one. The commenter asked the Department to clarify how the data obtained from a workforce data system would be used to meet the placement rate requirements and the timeline for reporting those rates. In addition, the commenter suggested revising the placement rate provisions in § 668.8(g) to more closely align those provisions with practices used by State data systems.

One commenter stated that in order to receive Federal funding under the Carl D. Perkins Career and Technical Education Act, a program must receive State approval that entails a review of documentation requiring that the program be high demand, high wage or in an emerging field. As part of the State review, the institution provides documentation of potential placement. The commenter recommended that the Department waive the gainful employment provisions for all certificate programs approved by the State under this review process.

A commenter supported disclosing placement rate data, but noted that the institution would only be able to report on graduates who are employed in the State or continued their education. The institution would not be able to provide occupationally specific placement data, or data about graduates who find employment outside the State, because the State's labor data base only tracks (1) the type of business a graduate is employed by, not the occupation of the graduate, and (2) graduates who are employed in the State.

Several other commenters supported the proposed placement rate disclosures, but believed that the provisions in § 668.8(g) were inadequate. The commenters made several suggestions, including:

(1) Expanding the category of students who complete a program (currently in § 668.8(g)(1)(i)) to include students who are eligible for a degree or certificate. The commenters stated they are aware of institutions that delay providing the degree or certificate to students, which omits these students from the placement rate calculation.

(2) Specifying that the time standards in § 668.8(g) (employment within 180 days of completing a program and employment for 13 weeks) also apply to rates calculated from State workforce data systems.

(3) Specifying that employment must be paid. The commenters stated they are aware of institutions that have counted students in unpaid internships as being employed.

(4) To be counted in the placement rate, providing that a student must find employment in one of the SOC codes identified for the program unless the student finds a job that pays more than any of the identified SOC codes. The commenters believed that some institutions stretch the concept of a "related" comparable job as currently provided in § 668.8(g)(1)(ii). For example, an institution might include any19.667 Td(One comx-riditl)Tjia

examined by the IPEDS Technical Review Panel (TRP), which is a peer review panel that includes individuals representing institutions, education associations, data users, State governments, the Federal government, and other groups. The TRP meets to discuss and review IPEDS-related plans and looks at the feasibility and timing of the collection of proposed new items, added institutional burden, and possible implementation strategies. After each meeting, a meeting report and suggestions summary is posted to the IPEDS Web site. The postsecondary education community then has 30 days to submit comments on the meeting report and summary. After those comments are considered, the Department requests the Office of Management and Budget (OMB) to include the changes in the next IPEDS data collection. This request for forms clearance is required by the Paperwork Reduction Act of 1995, as amended. A description of the changes and the associated institutional reporting burden is included in the request which is then published by OMB as a notice in the . . . . , initiating a 60-day public comment period. After that, a second notice is published in the . . . . , initiating a 30-day public comment period. Issues raised by commenters are resolved, and then OMB determines whether to grant forms clearance. Only OMB cleared items are added to the IPEDS data collection.

Although we agree with the commenters that the data maintained or processes used by workforce data systems may vary State by State, and that the data systems are not available to all institutions or in all States, we continue to believe that these data systems afford participating institutions an efficient and accurate way of obtaining employment outcome information. However, because of State-to-State variances and in response to comments about how employment outcome data translate to a placement rate, NCES will develop the methods needed to use State employment data to calculate placement rates under its deliberative process for IPEDS.

Until the IPEDS-developed placement rate methodology is implemented, an institution that is required by its accrediting agency or State to calculate a placement rate, or that otherwise calculates a placement rate, must disclose that rate under the current provisions in § 668.41(d)(5). However, under new § 668.6(b), the institution must disclose on its Web site and promotional materials the placement rate for each program that is subject to the gainful employment provisions if that information is available or can be determined from institutional placement rate calculations. Consequently, to satisfy the new disclosure requirements, an institution that calculates a placement rate for one or more programs would disclose that rate under § 668.6(b) by identifying the accrediting agency or State agency under whose requirements the rate was calculated. Otherwise, if an accrediting agency or State requires an institution to calculate a placement rate only at the institutional level, the institution must use the agency or State methodology to calculate the placement rate for each of its programs from information it already collects and must disclose the program-specific placement rates in accordance with § 668.6(b).

C , : Section 668.6(b) has been revised to specify that an institution must disclose for each program the placement rate calculated under a methodology developed by its accrediting agency, State, or the National Center for Education Statistics (NCES). The institution must disclose the accrediting agency or State-required placement rate beginning on July 1, 2011 and must identify the accrediting agency or State agency under whose requirements the rate was calculated. The NCES-developed placement rate would have to be disclosed when the rates become available.

O - O i i

O i : Many commenters asked the Department to clarify the meaning of "on-time" completion rate. Other commenters assumed that "on-time" completion referred to the graduation rate currently calculated under the Student Right to Know requirements in § 668.45, or encouraged the Department to either (1) adopt the current requirements in § 668.45 for gainful employment purposes, or (2) use a completion rate methodology from an accrediting agency or State, to minimize confusion among students and burden on institutions. One of the commenters suggested that if the Department intended "on-time" to mean 100 percent of normal time for completion, then the proposed rate should be calculated in the same manner as the completion rate in § 668.45 for normal time and incorporate the exclusions for students transferring out of programs and other exceptions identified in § 668.45(c) and (d). Another commenter opined that absent significant enforcement to ensure that all institutions consistently use the same definition of "on-time" completion rate, students will be unfairly led to believe that institutions who report conservatively have less favorable outcomes than institutions who report aggressively. One commenter cautioned that it may be misleading to focus heavily on graduation and placement rates, particularly for institutions whose students are employed while seeking a degree.

A number of commenters supported the "on-time" completion requirement, and in general all of the proposed disclosures, stating that providing outcome data would allow prospective students to make more informed decisions. The commenters believed that better outcome data will help to ensure that the taxpayer investment is well spent, and that students are protected from programs that overcharge and under-deliver.

A commenter stated that under State licensing requirements for cosmetology schools a student must be present, typically for 1,500 hours, to qualify for graduation and to complete the program. Taking attendance and ensuring that a student is present for these hours is typically required. The commenter reasoned that for a student to complete the program "on-time" the student could not miss a single day or even be late for classes as opposed to a credit hour program where a student does not have to attend classes 100 percent of the time but will still be considered to satisfy the on-time requirement. To mitigate the difference between clock and credit hour programs and account for legitimate circumstances where a student would miss classes, the commenter suggested that the standard for "on-time" incorporate the concept of a maximum timeframe under the satisfactory academic progress provisions that allow a student to complete a program at a specified rate.

D , : In proposing the on-time completion rate requirement, the Department intended to include all students who started a program to determine the portion of those students who completed the program no later than its published length. This approach differed significantly in two ways from the completion rate under the Student Right to Know (SRK) provisions in § 668.45. First, in calculating the completion rate the SRK methodology includes in the cohort only full-time, first-time undergraduate students, not all students. Second, the SRK rate is based on 150 percent of normal time, not the actual length of the program. However, in view of the comments suggesting that we use the SRK methodology, or a modified version, we examined whether the cohort of students under SRK could be expanded to include all students and from that,

whether a completion rate could be calculated based on normal time, as defined in § 668.41(a). We concluded that doing this would be difficult and too complex for institutions and the Department.

We believe prospective students should know the extent to which former students completed a program on time, not only to ground their expectations but to plan for the time they will likely be attending the program—an important consideration for many students who cannot afford to continue their education without earnings from employment. Therefore, to minimize burden on institutions while providing meaningful information to prospective students, an institution must calculate an on-time completion rate for each program subject to the gainful employment provisions by:

(1) Determining the number of students who completed the program during the most recently completed award year.

(2) Determining the number of students in step (1) who completed the program within normal time, regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years. The two-year timeframe would apply to all students who enroll in the program. In other words, if a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, the transfer credits have no bearing on the two-year timeframe. This student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who enrolls in the two-year program from another program at the institution would have to complete the two-year program in normal time beginning from the date the student started attending the prior program.

(3) Dividing the number of students who completed within normal time in step (2) by the total number of completers in step (1) and multiplying by 100.

With regard to the commenter who believed that a student could not miss a single day of classes to complete a program on time, we note that under § 668.4(e) a student can be excused from attending classes. Under this section, a student may be excused for an amount of time that does not exceed the lesser of (1) any thresholds established by the institution's accrediting agency or State agency, or (2) 10 percent of the clock hours in a payment period. Absent any

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providing a competitive advantage to institutions with smaller populations of student loan borrowers.

Many commenters supported the proposed requirement for disclosing the median debt of students who complete a program, but suggested that institutions should also disclose the median debt of noncompleters. The commenters stated that it was one thing for students to be told that 40 percent graduate with $20,000 in loan debt, but it's another for them to understand that the majority of students who don't complete have $15,000 in loan debt they would have to repay. The commenters believed that separating the disclosures by completers and noncompleters would enable better comparisons between programs, and would not create the appearance of low median debt for programs with low completion rates. In addition, to minimize burden the commenters suggested that collecting the data needed to calculate the median loan debt could appropriately be limited to programs in which a significant share of students borrow. According to the commenters, this approach would ensure that potential students and the Department know when a program has high student borrowing rates and low completion rates.

D / : We agree with the commenters that the debt an institution reports under § 668.6(a)(4) for institutional financing plans is the amount a student is obligated to repay upon completing the program. Under this same section, an institution must also report the amount of any private education loans it knows that students received.

The HEOA amended both the HEA and the Truth-in-Lending Act (TILA) to require significant new disclosures for borrowers of private education loans. The HEOA also requires private education lenders to obtain a private loan self-certification form from every borrower of such a loan before the lender may disburse the private education loan.

Although the term "private education lender" is defined in the TILA, the Federal Reserve Board considers an entity to be a private education lender, including an institution of higher education, if it meets the definition of "creditor." The term "creditor" is defined by the Federal Reserve Board in 12 CFR 226.2(a)(17) as a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. A person regularly extends consumer credit only if it extended credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.

The term / / / / is defined in 12 CFR 226.46(b)(5) as an extension of credit that:

- Is not made, insured, or guaranteed under title IV of the HEA;
- Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
- Does not include open-end credit or any loan that is secured by real property or a dwelling; and
- Does not include an extension of credit in which the covered educational institution is the creditor if (1) the term of the extension of credit is 90 days or less (short-term emergency loans) or (2) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments (institutional billing plans).

Examples of private education loans include, but are not limited to, loans made expressly for educational expenses by financial institutions, credit unions, institutions of higher education or their affiliates, States and localities, and guarantee agencies.

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amount of debt incurred by the student to the program the student completed. So, in the commenter's example where a student enrolls in a postbaccalaureate certificate program and is concurrently pursuing a master's degree, the debt the student incurs for the certificate program would be included as part of the debt the student incurs for completing the program leading to a master's degree. If the student does not complete the master's degree program, but completes the certificate program, then only the debt incurred by the student for the certificate program would be used in determining the certificate program's median loan debt.

The Department will provide the median loan debt to an institution for each of its programs, along with the median loan debt identified separately for FFEL and Direct Loans, and for private education loans and institutional financing plans. The institution would then disclose these debt amounts, as well as any other information the Department provides to the institution about its gainful employment programs, on its Web site and in its promotional materials to satisfy the requirements in § 668.6(b)(5).

While we generally agree with the suggestion that disclosing the median loan debt for students who do not complete a program may be helpful to prospective students, determining when or whether students do not complete is problematic for many programs even for students who withdraw or stop attending during a payment period—those students may return the following payment period. Because further review and analysis are needed before we could propose a requirement along these lines, institutions will need to report the CIP code for every student who attends a program subject to the gainful employment provisions and the total number of students who are enrolled in each of its programs at the end of an award year.

In cases where a student matriculates from one program to a higher credentialed program at the same institution, the Department will associate all the loan debt incurred by the student at the institution to the highest credentialed program completed by the student. To do this, the institution must inform the Department that even though a student completed a program, the student is continuing his or her education at the institution in another program. We wish to make clear that an institution would still need to provide the information under § 668.6(a) about each program the student completes. The Department will include the student's loan debt in calculating the median loan debt for the program the student most recently completed, or delay including the student's associated loan debt in calculating the median loan debt for the higher credentialed program. The Department will include the student's associated debt for the higher credentialed program when the student completes that program. If the student does not complete the higher credentialed program, then only the loan debt incurred by the student for completing the first program would be used in calculating the median loan debt for the first program.

Similarly, in cases where a student transfers from school A to school B, the Department will delay including the loan debt incurred by a student attending a program at school A pending the student's success at school B. If the student completes a higher credentialed program at school B, the median loan debt for that program includes only the student's loan debt incurred at school B. If the student does not complete the program at school B, then only the student's loan debt incurred for completing the program at school A is included in calculating the median loan debt for the program at school A. In other words, a student who completes a program and continues his or her education at the same institution or at another institution is considered to be in an in-school status and we will delay using the student's loan debt until the student completes a higher credentialed program or stops attending. The following chart and discussion illustrate this process.

School A		School B					
Student		Loan debt			Loan debt		
	Certificate	$3,000	Completed	Degree	$4,000	Completed	Gainful Employment Program?
1			Yes			Yes	Yes.
2			Yes			No	Yes.
3			Yes			Yes	No.
Same School							
4			Yes			Yes	Yes.
5			Yes			No	Yes.
6			Yes			Yes	No.

Example 1. Student is in an in-school status until the degree program is completed at School B. School A and B would report loan debt for each of their programs. Only the $4,000 debt incurred by the student at School B would be include0 the stw0 4h7Brebt debt for T*(inclcalculation eachdegree program is)tion eace degree 3,5.6i1 9 lSQq142 eid0.3 wp .3 w aUisSQ

the school is associated to the degree program and included in the median loan debt calculation for the degree program. None of the student's debt is included in calculating the median loan debt of the certificate program.

5. Student is in an in-school status while attending the degree program, but does not complete that program. Only the $3,000 debt incurred by the student for completing the certificate program would be included in the median loan debt calculation for that program. None of the student's debt would be included in the median loan debt calculation for the degree program because the student did not complete that program.

6. Student is in an in-school status while attending the degree program, but the degree program is not subject to the gainful employment provisions. When the student completes the degree program, none of the student's debt would be included in the median loan debt calculation for the certificate program and no calculation would be performed for the degree program because it is not subject to the gainful employment provisions.

The Department disagrees with the suggestions that an institution should not be required to disclose loan debt incurred by students for living expenses because many students cannot afford to enroll in a program without borrowing to pay for living expenses and other education-related costs. Identifying only a portion of the loan debt that a student is likely to incur not only defeats the purpose of the disclosure but also may be misleading. With respect to the comments that loan debt related to living expenses should be disclosed separately from loan debt tied directly to institutional charges, we are concerned about how institutions would make or portray these disclosures and believe that separating the debt amounts would be confusing to prospective students.

We find little merit in the argument that using median loan debt, instead of mean loan debt, would provide a competitive advantage to institutions with fewer student loan borrowers. Assuming that an institution with fewer borrowers has the same enrollment as an institution with a large number of borrowers, then regardless of whether the mean or the median is used, the loan debt will be lower for an institution with fewer borrowers because all of the students who do not borrow would reduce its mean or median loan debt.

When these regulations take effect on July 1, 2011, the Department will require institutions to report no later than October 1, 2011 the information

For example, it would be impossible for an institution to identify and disclose the full range and number of job opportunities that might exist for MBA graduates. As an alternative, the commenters suggested that the Department require schools to disclose the types of employment found by their graduates in the preceding three years. Other commenters had similar concerns and suggested that instead of disclosing all occupations by name and SOC code, the Department should allow an institution to disclose a sampling or representative set of links for the occupations stemming from its programs. Otherwise, the commenters were concerned that an institution would run afoul of the misrepresentation provisions unless it fully and completely listed all of the SOC and O*NET codes related to each program offered at the institution. Another commenter suggested that an institution should only list those occupations in which a majority of its program completers were placed.

A commenter claimed that it would be confusing and misleading to provide information on hundreds of jobs. To illustrate this point, the commenter stated that entering a CIP code of 52 for "Business, Management, Marketing and Related Support Services" would lead to 86 codes representing more than 300 occupational profiles. To avoid confusing students, the commenter suggested that an institution provide links only to those careers where its students have typically found employment.

One commenter thought that the link to O*Net was unnecessary because students could use search engines to research potential jobs.

Another commenter supported the O*NET disclosures because the additional administrative burden was not significant and the change was long overdue.

D : In general, we do not believe that the links to O*NET will lead to an unwieldy amount of information when the full 6-digit CIP code is entered on the SOC crosswalk at *h* :// /. For example, entering the full 6 digit CIP code, 52.9999, for Business, Management, Marketing and Related Support Services, identifies only nine related occupations (SOCs). As shown below, it is these links to, and the names of, the nine occupations that an institution must post on its Web site.

52.9999 Business, Management, Marketing, & Related Support Services, Other
11–9151.00 Social and Community Service Managers
11–9199.00 Managers, All Other
13–1199.00 Business Operations Specialists, All Other
41–1011.00 First-Line Supervisors/Managers of Retail Sales Workers
41–1012.00 First-Line Supervisors/Managers of Non-Retail Sales Workers
41–3099.00 Sales Representatives, Services, All Other
41–4011.00 Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products
41–4012.00 Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products
41–9099.00 Sales and Related Workers, All Other

However, for 6-digit CIP codes that yield more than ten occupations, an institution may, in lieu of providing links to all the identified SOCs, provide links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing a program.

C : Section 668.6(b) has been revised to allow an institution to provide prospective students with Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program.

D *P* *O* *O* : Many commenters supported the proposal to disclose program costs. The commenters lauded this information as more useful to students than disclosing costs by credit hour or by semester and several commenters encouraged the Department to make this section of the regulations effective as soon as possible.

Some commenters indicated that the program costs in proposed § 668.6(b)(2) differ from the costs an institution makes available under § 668.43(g). The commenters suggested that all costs that a student may incur should be disclosed including charges for full-time and part-time students, estimates of costs for necessary books and supplies as well as estimated transportation costs. Other commenters asked the Department to clarify how program costs under the proposed Web site disclosures would be calculated differently than those required in the student consumer information section of the regulations. In addition, some of these commenters noted that although § 668.43 requires an institution to disclose program cost upon request, many students do not know to ask for it, or the information is not currently presented in a clear manner. Another commenter noted that the phrase "institutional costs" could be interpreted to mean only those costs payable to the institution and recommended that the phrase be changed to "cost of attendance."

Several commenters opined that providing program costs would confuse students. One of the commenters recommended using just the net price calculator as that would also ease institutional burden.

D : Although we recently revised § 668.43(a) to provide that an institution must make program cost information readily available, not just upon the request of a student, that section does not require the institution to disclose program costs on its Web site. All of the disclosures in § 668.6(b), including the disclosure of program costs, must be on the same Web page to enable a prospective student to easily obtain pertinent information about a program and compare programs. Along these lines, and in view of the recent GAO investigation (see *h* :// / / *10948*.) raising concerns over program cost information, § 668.6(b) specifically requires an institution to disclose on the same Web page (1) Links to O*NET identifying the occupations stemming from a program or Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program, (2) the on-time graduation rate of students completing the program, (3) the placement rate for students completing the program, (4) the median loan debt incurred by students completing the program, and (5) the costs of that program. The institution must disclose the total amount of tuition and fees it charges a student for completing the program within normal time, the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board if the institution provides it. The institution may include information on other costs, such as transportation and living expenses, but in all cases must provide a Web link, or access, to the institutional information it is required to provide under § 668.43(a).

C : Section 668.6(b) has been revised to provide that an institution must disclose, for each program, all of the required information in its promotional materials and on a single Web page. The institution must provide a prominent and direct link to this page on the program home page of its Web site or from any other page containing general, academic, or admissions information about the program. In addition, this section is revised to specify that an institution must disclose the total amount of tuition and fees it charges a student for completing the

program within normal time, the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the amount of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but must provide a Web link, or access, to the program cost

which they believed has been effective at assigning credit for over 100 years. One commenter noted that the education community has been able to reach consensus on credit determinations despite the lack of a uniform definition.

Many commenters believed that credit hours are fundamentally measurements of academic achievement and others believed that the Secretary's only reason for defining a credit hour is to have a standard measure for determining eligibility for and distribution of title IV, HEA program funds. The commenters believed that credit hours should not be treated as fiscal units. One of these commenters contended that the systems of assigning academic credit and determining the distribution of title IV, HEA program funds are different and should be kept separate. Another commenter expressed concern that treating credit hours as fiscal units would cause the Federal Government to give consideration to fiscal matters above all others.

Several commenters believed that the Secretary's proposed definition of a credit hour is too restrictive and does not account for institutional or programmatic variances. These commenters believed that a Federal credit-hour definition is inapplicable to a diverse educational system composed of different types of institutions, programs, and course formats.

One commenter expressed concern that the proposed credit-hour definition did not account for events that may occur within institutions' academic calendars, such as Federal and religious holidays, natural disasters, or campus safety issues. This commenter believed that these events may prohibit institutions' compliance with proposed paragraph (1) of the credit-hour definition because institutions may not meet the requirements for classroom instruction or minimum weeks in a semester.

A few commenters believed that the proposed credit-hour definition needed more specificity in proposed paragraph (1) with regard to the quantity of time that constitutes a credit hour. One commenter suggested revising the proposed definition to specifically state that a credit hour consists of 50 minutes of instructor contact for every credit earned in a 16 week semester and two hours of out-of-class work for each credit. Another commenter suggested defining a credit hour in proposed paragraph (1) of the definition in terms of clock hours.

One commenter suggested generalizing the proposed definition of a credit hour to state: (1) A credit hour is a unit of measure associated with the achievement of prescribed learning outcomes for a particular course of study, regardless of instructional delivery, (2) each institution participating in title IV, HEA programs must define, document, and consistently apply its process for the determination of credit for the achievement of learning outcomes, and (3) some institutions may also adhere to a standard academic credit conversion rate as defined by their accrediting agency or State agency.

One commenter believed that all accrediting agencies should be required to use a more general definition of a credit hour wherein a semester hour consists of at least 15 hours of classroom contact; 30 hours of supervised laboratory instruction, shop instruction, or documented independent study activities; or not fewer than 45 hours of externship, internship, or work related experience. This commenter believed that a quarter hour should consist of at least 10 hours of classroom contact; 20 hours of supervised laboratory instruction, shop instruction, or documented independent study activities; or not fewer than 30 hours of externship, internship, or work related experience.

One commenter believed that the proposed credit-hour definition provided institutions with too much autonomy to determine an equivalent amount of work as defined in proposed paragraph (1) because there are no standard measures for student learning outcomes. This commenter suggested revising proposed paragraph (1) to equate classroom time with direct faculty instruction and three hours of laboratory work with one hour of classroom time and two hours of out-of-class work. The commenter also suggested revising proposed paragraphs (2) and (3) to require institutions to establish and document academic activities equivalent to the work defined in proposed paragraph (1) and revising proposed paragraph (3) to require institutions to compare student achievement to the intended outcomes assigned and student achievement attained for credit hours measured under proposed paragraph (1).

D *:* The credit-hour definition in § 600.2 and the provisions in §§ 602.24(f) and 603.24(c) were designed to preserve the integrity of the higher education system by providing institutions, accrediting agencies, and State agencies recognized under 34 CFR part 603 with the responsibility for determining the appropriate assignment of credit hours to student work. Under proposed §§ 602.24(f) and 603.24(c), the institution's accrediting agency, or recognized State agency if, in lieu of accreditation, the institution is approved by one of the four State agencies recognized under 34 CFR part 603, would be responsible for reviewing and evaluating the reliability and accuracy of an institution's assignment of credit hours in accordance with the definition of credit hour in § 600.2. These final regulations employ these basic principles of reliance on institutions and on accrediting agencies or, if appropriate, recognized State agencies, for ensuring institutions' appropriate determinations of the credit hours applicable to students' coursework.

The credit-hour definition in § 600.2 is intended to establish a quantifiable, minimum basis for a credit hour that, by law, is used in determining eligibility for, and the amount of, Federal program funds that a student or institution may receive. We believe that the definition of a credit hour in § 600.2 is consistent with general practice, provides for the necessary flexibilities, and may be used by institutions in their academic decision-making processes and accrediting agencies and recognized State agencies in their evaluation of institutions' credit assignments.

We note, however, that institutions, accrediting agencies recognized under 34 CFR part 602, and State agencies recognized under 34 CFR part 603 are required to use the definition in § 600.2 for Federal program purposes such as determining institutional eligibility, program eligibility, and student enrollment status and eligibility. We believe that in most instances the definition will generally require no or minimal change in institutional practice to the extent an institution adopts the definition for its academic purposes rather than maintaining a separate academic standard.

The provisions in §§ 600.2, 602.24, and 603.24 neither limit nor prescribe the method or manner in which institutions may assign credits to their courses for academic or other purposes apart from Federal programs. These regulations do not require institutions to adopt the definition of a credit hour in § 600.2 in lieu of existing institutional measurements of academic achievement, but rather to quantify academic activity for purposes of determining Federal funding. An institution will be able to continue using the long-standing credit-assignment practices that it has found to be most effective for determining credit hours or equivalent measures for academic purposes, so long as it either ensures conformity, or uses a different

measure, for determining credit hours for Federal purposes. This position is consistent with the application of other Federal program requirements. For example, an institution may choose to define full-time enrollment status in a semester for academic purposes as 15 semester hours while it defines full-time for title IV, HEA program purposes as 12 semester hours under the minimum requirements of the definition of - i in § 668.2.

We do not agree that the proposed definition is too restrictive or is inapplicable in a diverse educational system. Nor do we believe that the definition would prevent institutions from taking into consideration events such as Federal and religious holidays or campus safety issues. In the event of natural disasters, the Department has consistently provided guidance on how the regulations may be applied in such exceptional circumstances. The credit-hour definition allows an institution to establish an academic calendar that meets its needs and its students' needs, while ensuring a consistent measure of students' academic engagement for Federal purposes.

We do not agree with the commenters that paragraph (1) of the proposed credit-hour definition needs more specificity of the term "one hour." We believe that it is unnecessary to define one hour as either 50 minutes or one clock hour because the primary purpose of paragraph (1) of the proposed credit-hour definition is to provide institutions with a baseline, not an absolute value, for determining reasonable equivalencies or approximations for the amount of academic activity defined in the paragraph.

We do not agree that the proposed definition should be more generalizraph (1) erm

online and distance education programs, and hybrid programs with online and in-class components. A few commenters believed that the proposed credit-hour definition would particularly suppress innovation of delivery methods because institutions would be focused on ensuring they meet the Federal definition of a credit hour and not on the desired academic outcomes. These commenters believed that institutions would not be able to respond to changing student populations by diversifying delivery methods. A few commenters noted that minority students and nontraditional students such as veterans, active military personnel, and working adults would be particularly harmed because they rely on programs offered through alternative delivery methods.

Several commenters believed that the proposed credit-hour definition is not applicable to alternative delivery methods. A few commenters believed that credit hours are not compatible with technological advancements in education. These commenters believed that the proposed credit-hour definition would minimize the use of technology in education. Some commenters believed that proposed paragraph (1) assumed a classroom or lecture based model of instruction and was not applicable to online or hybrid programs.

A few commenters questioned how to measure direct faculty instruction with regard to an online or hybrid program when no physical classroom exists. Two commenters noted that in distance education and hybrid programs, the concept of contact hours does not apply. The commenters recommended expanding paragraph (3) of the proposed definition to specifically address that institutions offering nontraditional programs including distance delivery programs and accelerated programs may provide institutionally established equivalencies for the amount of work required in paragraph (1) within the discretion of the institution.

Several commenters believed that the Secretary's proposed credit-hour definition would negatively impact how earned credits are calculated for online and hybrid courses.

One commenter believed that the Secretary's proposed credit-hour definition represented an effort by the Secretary to reinstate a regulation that had been removed in 2002 which required higher education programs that did not operate in a standard semester, trimester, or quarter system to offer a minimum of 12 hours of course work per week to maintain eligibility for title IV, HEA program funds.

Two commenters believed that the Secretary's proposed credit-hour regulations would legitimize institutions' use of the Carnegie Unit, which generally consists of a ratio of two hours of work outside of class for every hour of classroom time, and increase scrutiny on institutions that do not currently use the Carnegie Unit. These commenters believed that under the proposed regulations, an institutional credit system that is not currently based on the Carnegie Unit would be undervalued because these institutions would have a significant burden to develop and demonstrate student achievement of learning outcomes that their peers using the Carnegie Unit would not have.

D , : We do not agree with the commenters that the credit-hour definition in § 600.2 will limit institutions' flexibility to creatively respond to innovations in educational delivery methods and changing student needs. A fundamental component of the credit-hour definition in § 600.2 provides that institutions must determine the academic activity that approximates the amount of work defined in paragraph (1) based on institutionally established learning outcomes and verifiable student achievement. The definition allows institutions that have alternative delivery methods, measurements of student work, or academic calendars to determine intended learning outcomes and verify evidence of student achievement.

All institutions participating in title IV, HEA programs have a responsibility to ensure appropriate treatment of Federal funds, regardless of course format or educational delivery method. The definition in § 600.2 provides institutions with a baseline for determining the amount of student work necessary for title IV, HEA program eligibility, but does not specify the particular program formats or delivery methods that institutions must use.

The credit-hour definition is not a reinstatement of the old "12-hour rule," that was removed from the Department's regulations in 2002. The 12-hour rule required programs that did not operate in standard semester-, trimester-, or quarter-term systems to offer a minimum of 12 hours of course work per week to maintain eligibility for Federal programs. The credit-hour definition in these final regulations applies to all institutions, regardless of whether they operate on a standard-term academic calendar. In addition, while the old 12-hour rule required 12 hours of instruction, examination, or preparation offered by an institution per week, the credit-hour provisions in § 600.2 require institutions to provide students with an amount of work equivalent to the amount of work described in paragraph (1) of the credit-hour definition.

C , : None.

O , : Several commenters objected to proposed paragraph (3) of the credit-hour definition. A few commenters believed that paragraph (3) of the proposed credit-hour definition is vague regarding the entity responsible for determining "reasonable equivalencies." A few commenters believed that the proposed credit-hour provisions did not provide enough guidance on what academic activities the Department would accept as reasonable equivalencies for the amount of work defined in proposed paragraph (1). A few commenters believed that the term "reasonable" put the Department0.2 requuIp.36
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institution. In cases where the amount of credit hours assigned to a program is significantly overstated, the Secretary may fine the institution or limit, suspend, or terminate its participation in Federal programs.

C , : None.

O i : Some commenters believed that the proposed credit-hour definition would alter institutions' current credit assignments and courses. A few of these commenters believed that a Federal definition of a credit hour sets an expectation that institutions should assign additional credit to courses if the work exceeds the amount defined in the proposed definition. One commenter believed that the proposed definition would increase the amount of class time that students are required to complete in order to earn credit. Another commenter believed that the proposed definition could cause institutions to increase courses' lecture or theory content and decrease hands-on training.

One commenter believed that the proposed credit-hour definition would force accrediting agencies to impose homework requirements on vocational institutions.

D , : The credit-hour definition does not require institutions to alter their assignment of credit to courses for academic purposes; however, institutions have the responsibility to demonstrate that credit hours assigned to courses for Federal program purposes adhere to the minimum standards of the credit-hour definition in § 600.2. If an institution determines that its current assignment of credits to its programs for Federal program purposes does not satisfy the minimum standards in the regulation, the institution will either have to reduce the credits associated with the program, increase the work required for the program, or both.

There is no requirement for institutions to assign additional credit to courses if the amount of work exceeds the amount described in paragraph (1) of the credit-hour definition. We have revised the credit-hour definition in § 600.2 to clarify that the amount of work described in paragraph (1) represents a minimum acceptable level of academic activity for which credit can be awarded to constitute a credit hour for Federal purposes. Institutions may use their discretion to assign additional credit if the amount of work for a course justifies such an assignment of credit in accordance with § 600.2.

There is no requirement under the credit-hour definition that would force accrediting agencies to impose homework requirements on vocational institutions. In general, institutions will be assessed to determine if they have established credit hours for title IV, HEA program purposes that meet at least the minimum standards in the regulation. Unless the program is subject to the credit-to-clock-hour conversion requirements in § 668.8(l) and (k), an institution would be required to determine the appropriate credit hours in accordance with paragraphs (1) and (2) of the credit-hour definition in § 600.2 of these final regulations for a program or coursework in a program that has no student work outside the classroom.

C , : We have revised the credit-hour definition in § 600.2 to clarify that the amount of work specified in paragraph (1) is a minimum standard and that there is no requirement for the standard to be exceeded.

O i : One commenter believed that the proposed provisions in § 600.2 did not appropriately address faculty workloads or faculty time in class.

D , : We do not believe that § 600.2 should address faculty workloads or faculty time in class as these issues are institutional administrative considerations outside the scope of these final regulations which set minimum standards for the measurement of credit hours.

C , : None.

O i : One commenter questioned why the proposed credit-hour regulations did not address § 668.9 which provides in paragraph (b) that a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education is not required to apply the formula contained in § 668.8(l) to determine the number of semester, trimester, or quarter hours in that program for purposes of calculating Title IV, HEA program funds. This commenter questioned whether for-profit hospital-based nursing programs would be subject to the proposed provisions in § 668.8(k) and (l).

D , : Section 481A of the HEA and § 668.9(b) specify that any regulations promulgated by the Secretary concerning the relationship between clock hours and semester, trimester, or quarter hours in calculating student grant, loan, or work assistance under the title IV, HEA programs do not apply to a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education.

C , : None.

O i : One commenter believed that institutions would need an accrediting or State agency's review of their programs' compliance with the proposed credit-hour definition in § 600.2. The commenter believed that the regulations are unclear on how programs should operate in the interim.

One commenter expressed concern that waiting for accrediting agencies to revise their standards after the proposed regulations are finalized would be detrimental to institutions offering programs in alternative formats.

One commenter believed that institutions will be developing new credit policies and should be afforded an adjustment period to receive and react to guidance from State agencies on their credit assignment policies.

D , : The provisions in §§ 602.24 and 603.24 provide that an institution must have a process for assigning credit that meets its accrediting agency's or State agency's standards, as well as, the credit-hour definition in § 600.2. An institution's credit assignment process is subject to review by its accrediting agency or, in some cases, a State agency recognized under 34 CFR part 603. We believe that institutions already have processes for assigning credit and, to the extent that these existing processes do not comply with these final regulations, institutions will need to revise their credit assignments to comply with the credit-hour definition in these final regulations for Federal program purposes. During the interim period between the effective date of these regulations and an accrediting agency's or State agency's review of institutions' compliance with the credit-hour definition in § 600.2, an institution is responsible and accountable for ensuring that its credit-hour assignments conform to the provisions of the credit-hour definition in § 600.2 of these final regulations and that its processes are in accord with its

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similar program. Thus, we do not agree with the recommendation that an institution should be required to demonstrate the portability of such credits to other institutions of higher education offering similar programs as we believe such a requirement would, in fact, interfere with the academic decision-making processes at institutions.

These regulations should not be inconsistent with current Federal laws, State regulations, and accrediting agencies' policies because of their intended narrow application to the determination of eligibility for, and distribution of, Federal program funds. Therefore, to the extent an institution determines that it may be necessary to use a current credit assignment system,

represented through stated student learning outcomes and demonstrated achievement of those outcomes, regardless of the delivery method.

One commenter recommended revising the proposed accrediting agency requirements in § 602.24(f) to state that in the case of competency-based programs that do not use clock hours or classroom time as a basis for credit, an accrediting agency must determine the appropriate assignment of credit by reviewing a well-substantiated list of competencies and assessing documented evidence of student achievement of competencies.

A few commenters requested that the Department revise proposed § 602.24(f)(2) to clarify that accrediting agencies have the authority and autonomy to determine review methodologies and techniques.

One commenter believed that it would be appropriate for an accrediting agency to review a sample of an institution's curriculum to determine whether the credit assignment policies were being appropriately applied by an institution, but it would not be appropriate for an accrediting agency to employ an unspecified sample of other institutions to determine whether or not the credits awarded for a particular course or program conformed to commonly accepted practice in higher education. This commenter suggested revising proposed paragraph § 602.24(f)(2) to specify that the agency must sample courses within an institution's program of study.

One commenter suggested that accrediting agencies review annual institutional submissions of data, policies, and procedures for assigning credit hours.

D , : We do not believe that further specificity is appropriate or necessary in § 602.24(f). Accrediting agencies must have the flexibility to review institutional credit-assignment processes that may vary widely in their policies and implementation and may have differing methods for measuring student work such as direct assessment. We believe that accrediting agencies are capable of developing appropriate methods for evaluating institutional credit processes without providing further specificity in the regulations. We note that accrediting agencies must demonstrate their ability to appropriately review these areas in order to receive recognition by the Secretary as reliable authorities on the quality of education or training offered by the institutions and programs they accredit, and that evaluation by the Secretary continues during periodic reviews of accrediting agencies.

We believe that it is not necessary to specify how an accrediting agency should review a competency-based program that does not use credit hours or clock hours as a basis for credit. In the case of a competency-based program, the institution may either base the assignment of credit on the time it takes most students to complete the program, or the program must meet the definition of a direct assessment program in § 668.10. In the first scenario, the institution's accrediting agency would review the institution's compliance with the provisions in § 600.2 or § 668.8(k) and (l) as applicable. In the second scenario, the institution's accrediting agency must review and approve each of the institution's direct assessment program's equivalencies in terms of credit hours or clock hours.

C , : None.

O i : A few commenters opposed the proposed provisions in § 602.24(f)(1)(i)(A) and (B) requiring accrediting agencies to evaluate an institution's policies and procedures for determining credit hours in accordance with proposed § 600.2 and to evaluate an institution's application of those policies and procedures to its programs and courses. Two commenters suggested that the provisions should not require accrediting agencies to evaluate compliance with proposed § 600.2 but should permit institutions to justify the manner in which credit hours are assigned and permit accrediting agencies to determine whether an institution's application of its policies and procedures are appropriate. These commenters believed that the proposed provisions require accrediting agencies to instruct institutions to follow a specific approach to assigning credit hours.

A few commenters suggested that the cross reference to the proposed credit-hour definition in § 600.2 be stricken from proposed § 602.24(f)(1)(i)(A) and replaced with a provision requiring accrediting agencies to conduct their review of an institution's assignment of credit hours consistent with the provisions of § 602.16(f).

D , : We do not believe that the provisions in proposed § 602.24(f) require accrediting agencies to mandate specific policies for institutions with regard to assigning credit hours to programs and coursework. However, we do believe that it is necessary to specify in § 602.24(f) that accrediting agencies must review an institution's policies and procedures for determining credit hours, and the application of those policies and procedures to programs and coursework in accordance with § 600.2 for title IV, HEA program purposes. Accreditation by an accrediting agency recognized by the Secretary is an institutional and programmatic requirement for eligibility for the title IV, HEA programs.

It is appropriate to specify the responsibilities of an accrediting agency in reviewing institutions' processes for assigning credit hours in § 602.24, and not § 602.16. The provisions in § 602.24 are related specifically to procedures accrediting agencies must have for institutions they accredit to obtain eligibility to participate in title IV, HEA programs. The provisions in § 602.16(f) address the processes used by accrediting agencies in setting standards in statutorily-defined areas required for agencies to be recognized by the Secretary.

C , : None.

O i : A few commenters expressed concern about proposed § 602.24(f)(1)(ii), which requires accrediting agencies to determine whether an institution's assignment of credit hours conforms to commonly accepted practice in higher education.

A few commenters believed that this proposal was inconsistent with the proposed credit-hour definition in § 600.2 and expressed a preference for the language in proposed § 602.24(f)(1)(ii).

One commenter suggested striking this proposed provision from the regulations and including this information in the "Guide to the Accrediting Agency Recognition Process" issued by the Department. This guide was issued in August 2010 under the title "Guidelines for Preparing/ Reviewing Petitions and Compliance Reports."

One commenter suggested revising proposed § 602.24(f)(1)(ii) to require accrediting agencies to evaluate institutions' assignment of credit hours based on a comparative study of similar institutions.

D , : We do not agree that the provisions in §§ 600.2 and 602.24(f)(1)(ii) are inconsistent. The provisions in § 600.2 establish a title IV, HEA program requirement for institutions to award credit hours for an amount of academic work that is a reasonable equivalency to the amount of work defined in paragraph (1) of the credit-hour definition. By comparison, the reference to "commonly accepted practice in higher education" in § 602.24(f)(1)(ii) establishes the parameters for accrediting agencies to determine whether institutions establish reasonable equivalences for the amount of work in paragraph (1) of the credit-hour definition within the framework of

acceptable institutional practices at comparable institutions of higher education.

We believe that it is necessary to include § 602.24(f)(1)(ii) in the regulations, rather than solely in the Department's "Guidelines for Preparing/ Reviewing Petitions and Compliance Reports." The regulations provide the requirements for accrediting agencies recognized by the Secretary whereas the "

policy, the agency must promptly notify the Secretary.

One commenter believed that with regard to proposed § 603.24(c)(2), it would be appropriate for a State agency to review a sample of an institution's curriculum to determine whether the credit assignment policies were being appropriately applied by an institution, but it would not be appropriate for a State agency to employ an unspecified sample of other institutions to determine whether the credits awarded for a particular course or program conformed to commonly accepted practice in higher education. This commenter suggested revising proposed § 603.24(c)(1) to require State agencies to evaluate an institution's assignment of credit hours based on a comparative study of similar institutions, and to revise proposed § 603.24(c)(2) to specify that the agency must sample courses within an institution's program of study.

D , ● : We do not agree with the commenters who believed that State agencies subject to the recognition criteria in 34 CFR part 603 will be confused by § 603.24(c) or will lack the administrative resources to meet these requirements. To be subject to § 603.24(c), a State agency must be an agency recognized by the Secretary under 34 CFR part 603 as a reliable authority regarding the quality of public postsecondary vocational education in its State. The only States that currently have recognized State agencies under 34 CFR part 603 are New York, Pennsylvania, Oklahoma, and Puerto Rico.

As with accrediting agencies that are recognized by the Secretary, we do not believe it is necessary to define the specific methods that State agencies recognized by the Secretary should use to evaluate institutions' processes for assigning credit hours.

We believe that § 603.24(c)(4) provides the necessary level of specificity with regard to a recognized State agency's notification to the spece)TjT*(es)(4))]TJ-1 -

but do not necessarily require that an institution measure student progress in clock hours. These commenters recommended revising proposed § 668.8(k)(2)(i)(A) so that an institution is not required to measure student progress in clock hours unless the Federal or State authority requires the institution to measure student progress exclusively in clock hours. One commenter believed that many accrediting agencies and State agencies require institutions to include a clock-to-credit-hour conversion rate as part of the new program submission process, but it is not the agencies' intent to consider these credit-hour programs as clock-hour programs. The commenter suggested adding a provision to proposed § 668.8(k)(2)(i)(A) so that it does not apply to institutions that are required to include a clock-to-credit-hour conversion rate in their accrediting agency or State application for a new program.

One commenter believed that accrediting agencies' standards vary with regard to requirements for programs offering a certain number of clock hours in order for a graduate to be eligible to take a certification or licensure exam and students' requirement to attend the programs' clock hours. This commenter believed that there should be no requirement for a program to be a clock-hour program unless an accrediting agency specifies that students must attend the clock hours to take the certification or licensure exam.

A few commenters believed that credit-hour programs are more recognized by employers and institutions. These commenters believed that it is difficult for students in clock-hour programs to transfer to credit-hour programs. The commenters also believed that employer-paid or employer-reimbursed tuition programs are generally administered based on credit hours.

One commenter believed that the proposed clock-to-credit-hour conversion provisions that only use credit hours were not consistent concerning States throughout the proposed regulations.

D *:* The provisions in § 668.8(k)(2)(i)(A) provide that a program must be considered a clock-hour program for title IV, HEA program

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complete the clock hours that are the basis for the credit hours awarded in a program even when an institution converts a program to credit hours under the provisions of § 668.8(k) and (l). These programs are still required to contain the clock hours that support the conversion under the regulations, and institutions are expected to make sure that those clock hours are completed by the students, subject to the institution's existing policies for excused absences and make-up classes.

We do not agree with the commenters who believe that § 668.8(k)(2)(iii) does not provide for excused absences or would require 100 percent attendance, because the regulations for clock hour programs already account for excused absences. Section 668.8(k)(2)(iii) specifically accounts for excused absences in accordance with the current regulations in § 668.4(e) which provides guidance on when an institution, in determining whether a student has successfully completed the clock hours in a payment period, may include clock hours for which the student has an

another commenter regarding problem areas with certain types of institutions.

C : None.

O : Several commenters questioned the need for proposed § 600.9. For example, several commenters questioned whether the Department's concern that the failure of California to reinstate a State regulatory agency was justified. Commenters believed that the regulations would not have prevented the concerns the Department identified in the case of the lapsing of the California State agency. One commenter believed the California issue was resolved and that accreditation and student financial aid processes worked. Some commenters believed that the current State regulatory bodies or other authorization methods were sufficient. One commenter stated that authorizations are spelled out in State statutes, and there is no need for the regulations. Some commenters believed that additional information is needed, such as a State-by-State review of the impact of proposed § 600.9, or the States with adequate or inadequate oversight. Several commenters were concerned that proposed § 600.9 would unnecessarily impact small States without discernable problems. Some commenters believed there is no evidence of marginal institutions moving to States with lower standards and that there is no danger to title IV, HEA program funds. One commenter believed that proposed § 600.9 should be eliminated because the commenter believed that its full effect is not known and that it will be chaotic if implemented. Another commenter believed that proposed § 600.9 would be burdensome, is not economically feasible, and would leave an institution at the mercy of the State. One commenter believed that proposed § 600.9 would encourage for-profit institutions to undermine State agencies such as through lobbying to underfund an agency and would stall reconsideration of legislation.

Some commenters believed that the Department's concerns were valid. One of these commenters believed that, in the absence of regulations, many States have forfeited their public responsibilities to accrediting agencies. In the case of the interim lapse of the State regulatory agency in California, the commenter believed that we do not know yet the extent of the mischief that may have occurred or may still occur, but the commenter has received reports that schools began operating in the gap period and are being allowed to continue to operate without State approval until the new agency is operational. The commenter understood that at least one of those schools closed abruptly, leaving many students with debts owed and no credential to show for their efforts.

Some commenters believed that the proposed regulations would not address issues with degree mills as they are not accredited. Some commenters urged the Department to offer leadership and support of Federal legislation and funding to combat diploma mills.

One commenter recommended that the Department use Federal funds for oversight. Another commenter suggested that the Department encourage the Federal Government to provide incentives to the States.

D : We do not agree with the commenters who believe that proposed § 600.9 should be eliminated. For example, we believe these regulations may have prevented the situation in California from occurring or would have greatly reduced the period of time during which the State failed to provide adequate oversight. While it may appear that the California situation was satisfactorily resolved as some commenters suggested, the absence of a regulation created uncertainty. As one commenter noted, during the period when the State failed to act, it appears that problems did occur, and that no process existed for new institutions to obtain State authorization after the dissolution of the State agency. We are concerned that States have not consistently provided adequate oversight, and thus we believe Federal funds and students are at risk as we have anecdotally observed institutions shopping for States with little or no oversight. As a corollary effect of establishing some minimal requirements for State authorization for purposes of Federal programs, we believe the public will benefit by reducing the possibilities for degree mills to operate, without the need for additional Federal intervention or funding. We do not believe that additional information is needed to support § 600.9 in these final regulations as § 600.9 only requires an institution demonstrate that it meets a minimal level of authorization by the State to offer postsecondary education. Because the provisions of § 600.9 are minimal, we believe that many States will already satisfy these requirements, and we anticipate institutions in all States will be able to meet the requirements under the regulations over time. This requirement will also bring greater clarity to State authorization processes as part of the Triad. Since the final regulations only establish minimal standards for institutions to qualify as legally authorized by a State, we believe that, in most instances they do not impose significant burden or costs. States are also given numerous options to meet these minimum requirements if they do not already do so, and this flexibility may lead to some States using different authorizations for different types of institutions in order to minimize burden and provide better oversight. The question of whether these regulations will impact the ability of any group to seek changes to a State's requirements is beyond the purview of these final regulations. As one commenter requested, we will continue to support oversight functions as provided under Federal law, and we believe that these final regulations will provide the necessary incentives to the States to assure a minimal level of State oversight.

C : None.

O : Some commenters questioned how the Department would enforce the proposed regulations. One commenter stated that the Department has no mechanism to enforce the proposed regulations and asks how they will improve program integrity. One commenter questioned why an institution may be held accountable for the actions of the State over which it has no direct control.

D : Any institution applying to participate in a Federal program under the HEA must demonstrate that it has the legal authority to offer postsecondary education in accordance with § 600.9 of these final regulations. If a State declines to provide an institution with legal authorization to offer postsecondary education in accordance with these regulations, the institution will not be eligible to participate in Federal programs.

As to an institution's inability to control the actions of a State, we do not believe such a circumstance is any different than an institution failing to comply with an accreditation requirement that results in the institution's loss of accredited status. We believe that in any circumstance in which an institution is unable to qualify as legally authorized under § 600.9 of these final regulations, the institution and State will take the necessary actions to meet the requirements of § 600.9 of these final regulations.

C : None.

O : One commenter believed that proposed § 600.9 would result in an unfunded mandate by the Federal Government. Another commenter stated that many States may see proposed § 600.9 as a revenue-generating opportunity and pass the costs of this requirement on to institutions, which

would have no choice but to pass that cost on to students.

D . . : We do not agree that § 600.9 of these final regulations will result in an unfunded mandate by the Federal Government, since many States will already be compliant and options are available that should permit other States to come into compliance with only minimal changes in procedures or requirements if they want to provide acceptable State authorizations for institutions. The regulations also include a process for an institution to request additional time to become compliant. Furthermore, if a State is unwilling to become compliant with § 600.9, there is no requirement that it do so. We also do not agree that States will see coming into compliance with § 600.9 as a revenue-generating opportunity, since any required changes are likely to be minimal.

C . . : None.

I . . .

C . . : Some commenters believed that the proposed regulations are ambiguous in meaning and application or are vague in identifying which State policies are sufficient. For example, one State higher education official suggested that proposed § 600.9 should be amended to differentiate among authorities to operate arising from administrative authorization of private institutions from legislation and from constitutional provisions assigning responsibility to operate public institutions. The commenter believed that proposed § 600.9 obfuscated the various means of establishing State authorization and the fundamental roles of State legislatures and State constitutions and recommended that these means of authorization and roles of State entities should be clarified.

Several commenters questioned what authorizing an institution to offer postsecondary programs entails. A few commenters pointed out that there is a wide array of State approval methods and many institutions were founded before the creation of State licensing agencies. An association representing State higher education officials urged that ample discretionary authority explicitly be left to the States. One commenter indicated that proposed § 600.9 failed to address when more than one State entity is responsible for a portion of the oversight in States where dual or multiple certifications are required. Another commenter believed that proposed § 600.9 did not adequately address the affect an institution's compliance with proposed § 600.9 would have if one of two different State approvals lapsed and both were necessary to be authorized to operate in the State or if the State ceased to have a process for handling complaints but the institutions continued to be licensed to offer postsecondary education. Some commenters asked whether specific State regulatory frameworks would meet the provisions of the proposed regulations. For example, one commenter believed that, under State law and practice in the commenter's State, the private institutions in the State already met the requirements in proposed § 600.9 that the commenter believed included: (1) The institution being authorized by a State through a charter, license, approval, or other document issued by an appropriate State government agency or State entity; (2) the institution being authorized specifically as an educational institution, not merely as a business or an eleemosynary organization; (3) the institution's authorization being subject to adverse action by the State; and (4) the State having a process to review and appropriately act on complaints concerning an institution. The commenter noted that all postsecondary institutions in the State must either have a "universal charter" awarded by the legislature or be approved to offer postsecondary programs. The commenter noted that these institutions are authorized as educational institutions, not as businesses. In another example, a commenter from another State believed that current law in the commenter's State addresses and covers many of the requirements outlined in proposed § 600.9. The commenter noted that many of the State laws are enforced by the State's Attorney General and attempt to protect individuals from fraud and abuse in the State's system of higher education. However, the commenter believed that it remained unclear whether the State would be required to create an oversight board for independent institutions like the commenter's institution or would be subject to State licensure requirements via the State licensure agency. The commenter believed that either option would erode the autonomy of the commenter's institution and add layers of bureaucracy to address issues currently covered by State and Federal laws.

One commenter suggested that proposed § 600.9(a)(1) be amended to provide that authorization may be based on other documents issued by an appropriate State government agency and delete the reference to "state entity." The commenter believed that the documents would affirm or convey the authority to the institution to operate educational programs beyond secondary education by duly enacted State legislation establishing an institution and defining its mission to provide such educational programs or by duly adopted State constitutional provisions assigning authority to operate institutions offering such educational programs.

Some commenters questioned whether there were any factors that a State may not consider when granting legal authorization. One commenter requested confirmation that under the proposed regulations authorization does not typically include State regulation of an institution's operations nor does it include continual oversight. A few commenters expressed concern regarding the involvement of the States in authorization and that a State's role may extend into defining, for example, curriculum, teaching methods, subject matter content, faculty qualifications, and learning outcomes. One commenter was concerned that proposed § 600.9 would create fiscal constraints on an institution due to, for example, additional reporting requirements or would impose homogeneity upon institutions that would compromise their unique missions. One commenter stated that the Department does not have the authority to review issues of academic freedom or curriculum content.

One commenter wanted assurances that the Department does not intend to use the proposed regulations to strengthen State oversight of colleges beyond current practices. One commenter was concerned that States could exercise greater and more intrusive oversight of private colleges.

One commenter suggested that the Department grandfather all institutions currently operating under a State's regulatory authority without a determination of its adequacy. Another indicated that private colleges and universities operating under a State-approved charter issued prior to 1972 are already subject to State regulation, even as they are exempt from State licensing. One commenter believed that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the regulatory requirements.

D . . : We agree with the commenters who were concerned that proposed § 600.9 may be viewed as ambiguous in describing a minimal standard for establishing State legal authorization. We agree, in principle, with the State higher education official who suggested that proposed § 600.9 should be amended to differentiate the

types of State authorizations for institutions to operate, but not based upon whether the source of the authorization is administrative or legislative. We believe the distinction for purposes of Federal programs is whether the legal entities are specifically established under State requirements as educational institutions or instead are established as business or nonprofit charitable organizations that may operate without being specifically established as educational institutions. We believe this clarification addresses the concerns of whether specific States' requirements were compliant with § 600.9 as provided in these final regulations.

We continue to view State authorization to offer postsecondary educational programs as a substantive requirement where the State takes an active role in authorizing an institution to offer postsecondary education. This view means that a State may choose a number of ways to authorize an institution either as an educational institution or as a business or nonprofit charitable organization without specific authorization by the State to offer postsecondary educational programs. These legal means include provisions of a State's constitution or law, State charter, or articles of incorporation that name the institution as established to offer postsecondary education. In addition, such an institution also may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. If a legal entity is established by a State as a business or a nonprofit charitable organization and not specifically as an educational institution, it may be subject to approval or licensure by State boards or State agencies that license or approve the institution to offer postsecondary education. The key issue is whether the legal authorization the institution receives through these means is for the purpose of offering postsecondary education in the State.

In some instances, as one commenter noted, a State may have multiple State entities that must authorize an institution to offer postsecondary programs. In this circumstance, to comply with § 600.9, we would expect that the institution would demonstrate that it was authorized to offer postsecondary programs by all of the relevant State entities that conferred such authorizations to that type of institution.

We do not believe it is relevant that an institution may have been established prior to any State oversight. We are concerned that institutions currently be authorized by a State to offer postsecondary education, although we recognize that a State's current approval for an institution may be based on historical facts. We therefore do not believe it is necessary to grandfather institutions currently operating under a State's regulations or statutes nor are we making any determination of the adequacy of a State's methods of authorizing postsecondary education apart from meeting the basic provisions of § 600.9 in these final regulations. If a private college or university is operating under a State-approved charter specifically authorizing the institution by name to offer postsecondary education in the State, a State may exempt an institution from any further State licensure process. The requirement to be named specifically in a State action also applies if the institution is exempt from State licensure based upon another condition, such as its accreditation by a nationally recognized accrediting agency or years in operation.

Further, these regulations only require changes where a State does not have any authorizing mechanisms for institutions other than an approval to operate as a business entity, or does not have a mechanism to review complaints against institutions. We anticipate that many States already meet these requirements, and will have time to make any necessary adjustments to meet the needs of the institutions.

With regard to the commenters who were concerned with the potential scope of a State's authority, we note that the Department does not limit a State's oversight of institutions, and only sets minimum requirements for institutions to show they are legally authorized by a State to provide educational programs above the secondary level. These regulations neither increase nor limit a State's authority to authorize, approve, or license institutions operating in the State to offer postsecondary education. Further, nothing in these final regulations limits a State's authority to revoke the authorization, approval, or license of such institutions. Section 600.9 ensures that an institution qualifies for Federal programs based on its authorization by the State to offer postsecondary education.

C , : We are amending proposed § 600.9 to distinguish the type of State approvals that are acceptable for an institution to demonstrate that it is authorized by the State to offer educational programs beyond the secondary level.

An institution is legally authorized by the State if the State establishes the institution by name as an educational

MEETS STATE AUTHORIZATION REQUIREMENTS*

Legal entity	Entity description

that the Department should accept State laws and regulations that can be reasonably interpreted as meeting the requirements of § 600.9 especially if State officials interpret their laws and regulations in such a manner.

One commenter requested that the Department explain how it would address currently enrolled students if a State is deemed not to provide sufficient oversight in accordance with Federal regulatory requirements. Another commenter asked how the Department will avoid such negative consequences as granting closed school loan discharges for large numbers of enrolled students. One commenter requested that the Department provide for seamless reinstatement of full institutional eligibility when a State meets all eligibility requirements after losing eligibility.

D , : We do not anticipate that all institutions in a State will lose title IV, HEA program assistance due to any State failing to provide authorization to its institutions under the regulations, because States may meet this requirement in a number of ways, and also with different ways for different types of institutions. If a State were to undergo a change that limited or removed a type of State approval that had previously been in place, it would generally relate to a particular set of institutions within a State. For example, a licensing agency for truck driving schools could lapse or be closed at a State Department of Transportation without providing another means of authorizing postsecondary truck driving programs. Only the eligibility of truck driving schools in the State would be affected under § 600.9 while the State could continue to be compliant for all other institutions in the State. It also seems likely that the State would consider alternate ways to provide State authorization for any institutions affected by such a change.

We believe that the provisions in amended § 600.9 are so basic that State compliance will be easily established for most institutions. The determination of whether an institution has acceptable State authorization for Federal program purposes will be made by the Department. We also note that the regulations permit a delayed effective date for this requirement under certain circumstances discussed below, and this delay will also limit the disruption to some institutions within a State.

If an institution ceased to qualify as an eligible institution because its State legal authorization was no longer compliant with amended § 600.9, the institution and its students would be subject to the requirements for loss of eligibility in subpart D of part 600 and an institution would also be subject to § 668.26 regarding the end of its participation in those programs. If an institution's State legal authorization subsequently became compliant with amended § 600.9, the institution could then apply to the Department to resume participation in the title IV, HEA program.

C , : None.

O i : Several commenters were concerned that students may lose eligibility for title IV, HEA program funds if a State is not compliant with proposed § 600.9. Some commenters noted that States may have to take steps to comply, which may include making significant statutory changes, and the regulations therefore need to allow adequate time for such changes, reflecting the various State legislative calendars. In some cases, the commenters believed a State's noncompliance would be because the State could no longer afford to meet the provisions of proposed § 600.9. One commenter believed that alternative pathways should be allowed for meeting State authorization and that States that exempt or grant waivers from licensing should be considered to fulfill requirements of proposed § 600.9 and another questioned whether a State that is not in compliance would have an opportunity to cure perceived problems before all institutions operating in the State lost institutional eligibility.

D , : We recognize that a State may not already provide appropriate authorizations as required by § 600.9 for every type of institution within the State. However, we believe the framework in § 600.9 is sound and provides a State with different ways to meet these requirements. Unless a State provides at least this minimal level of review, we do not believe it should be considered as authorizing an institution to offer an education program beyond secondary education.

If a State is not compliant with § 600.9 for a type or sector of institutions in a State, we believe the State and affected institutions will create the necessary means of establishing legal authorization to offer postsecondary education in the State in accordance with amended § 600.9. However, in the event a State is unable to provide appropriate State authorizations to its institutions by the July 1, 2011 effective date of amended § 600.9(a) and (b), we are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-extension of the effective date to July 1, 2013. As described in the section of the preamble entitled "Implementation Date of These Regulations," to receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

C , : None.

O i : A few commenters requested that the Department identify, publish, and maintain a list of States that meet or do not meet the requirements. One commenter cited an analysis that estimated that 13 States would comply with the proposed regulations upon implementation; 6 States would clearly not be in compliance; and 37 States would likely have to amend, repeal, or otherwise modify their laws. One commenter requested data to be provided by the Department for each sector of postsecondary education, including how many States are out of compliance, how many institutions are within those States, and how many students are enrolled at those institutions.

D , : We do not believe that there is a need to maintain and publish a list of States that meet, or fail to meet the requirements. States generally employ more than one method of authorizing postsecondary education. For example, a State may authorize a private nonprofit university through issuing a charter to establish the university, another private nonprofit college through an act of the State legislature, a for-profit business school through a State postsecondary education licensing agency, a cosmetology school through a State cosmetology board, and a truck-driving school through the State's Department of Transportation. We believe that an institution of whatever sector and type already is aware of the appropriate State authorizing method or methods that would establish the institution's legal authorization to offer postsecondary education and publication of any list is unnecessary.

C , : None.

O i : One commenter expressed concern with whether a State must regulate the activities of institutions and exercise continual oversight over institutions.

D , : While a State must have a process to handle student complaints under amended § 600.9(a) for all institutions in the State except Federal and tribal institutions, the regulations do not require, nor do they prohibit, any

process that would lead to continual oversight by a State.

C , : None.

C i: Several commenters expressed concern regarding the financial burden on the States to make changes in State laws and the amount of time that would be needed to make the necessary changes. Commenters feared that the States would most likely have to reduce further State tax subsidies provided to public institutions. As a result, costs will be increased for students at public institutions to cover lost revenues and increase costs for the title IV, HEA programs. One commenter stated that schools could delay progress of degree completion at State funded universities because they will be forced to reduce offerings.

D : We do not believe that it would impose an undue financial burden on States to comply with the provisions in § 600.9. In most instances we believe that a State will already be compliant for most institutions in the State or will need to make minimal changes to come into compliance. Thus, we do not agree with commenters who believed that the regulations would generally impact the funding of public institutions in a State or would necessitate a reduction in the offerings at public institutions.

C , : None.

E i : A i i
O i

C i: Several commenters supported the existing practice by which a State bases an institution's legal authorization to offer postsecondary education upon its accreditation by a nationally recognized accrediting agency, . ., an accrediting agency recognized by the Secretary. The commenters believed that proposed § 600.9 should be revised or clarified to permit existing practices allowing exemption by accreditation. Another commenter indicated that several States have exempted accredited institutions from State oversight unless those institutions run afoul of their accreditors' requirements. One commenter believed that proposed § 600.9 would require the creation of unnecessary, duplicative, and

evaluate the institution. Based on our consideration of the public comment, we believe that standard should be at least 20 years of operation. As in the case of accreditation, such an exemption could only be used if the State has established the entity as an educational institution. As noted above, a State may use a separate process to recognize by name the entity as an educational institution that offers programs beyond the secondary level if an institution was not authorized by name to offer educational programs in its approval as a legal entity within a State. We note that a State may also base a licensing exemption on a combination of accreditation and the number of years an institution has been in operation, as long as the State requirements meet or exceed at least one of the two minimum requirements, that is, an institution must be fully accredited or must have been operating for at least 20 years.

If an institution is established as a legal entity to operate as a business or charitable organization but lacks authorization to operate by name as an educational institution that offers postsecondary education, the institution may not be exempted from State licensing or approval based on accreditation, years in operation, or comparable exemption from State licensure or approval.

We do not believe that permitting such exemptions from State licensing requirements will distort the oversight roles of the State and an accrediting agency. We believe these comments are based on a misunderstanding of the role of a State agency recognized by the Secretary under 34 CFR part 603 as a reliable authority regarding the quality of public postsecondary vocational education in its State. Public postsecondary vocational institutions are approved by these agencies in lieu of accreditation by a nationally recognized accrediting agency. As noted in the comments, there are overlapping interests among all members of the Triad in ensuring that an educational institution is operating soundly and serving its students, and a State may establish licensing requirements that rely upon accreditation in some circumstances.

If an institution's State and accrediting agency have different standards, there is no conflict for purposes of the institution's legal authorization by the State, as the institution must establish its legal authorization in accordance with the State's requirements.

C , : We have amended proposed § 600.9 to provide that, if an institution is an entity that is established by name as an educational institution by the State and the State further requires compliance with applicable State approval or licensure requirements for the institution to qualify as legally authorized by the State for Federal program purposes, the State may exempt the institution by name from the State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years. If an institution is established by a State as a business or a nonprofit charitable organization, for the institution to qualify as legally authorized by the State for Federal program purposes, the State may not exempt the institution from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

C i

C i: An association of State higher education officials recommended that the States, through their respective agencies or attorneys general, should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by postsecondary institutions. The commenter stated that handling complaints is not a role that cpossQrblishwre reo1enal coma6rtable puglly *(exceed at least ibi

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the State Attorney General as well as other appropriate State officials. A State may choose to have a single agency or official handle complaints regarding institutions or may use a combination of agencies and State officials. All relevant officials or agencies must be included in an institution's institutional information under § 668.43(b). Directly relying on an institution's accrediting agency would not comply with § 600.9(a)(1) of these final regulations; however, to the extent a complaint relates to an institution's quality of education or other issue appropriate to consideration by an institution's accrediting agency, a State may refer a complaint to the institution's accrediting agency for resolution. We do not believe it is necessary to prescribe memoranda of understanding or similar mechanisms if a State chooses to rely on an institution's accrediting agency as the State remains responsible for the appropriate resolution of a complaint. Section 600.9(a)(1) requires an institution to be authorized by a State, thus providing an additional check on institutional integrity; however, we do not believe there are inadequate checks on State officials and agencies as they are subject to audit, review, and State legislative action.

We do not agree with the commenters that proposed § 600.9(b)(3) would unnecessarily use State resources, be impractical, or be chaotic to administer. There are complaints that only a State can appropriately handle, including enforcing any applicable State law or regulations. We do not agree that public institutions should be exempt from this requirement as a complainant must have a process, independent of any institution—public or private, to have his or her complaint considered by the State. The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint resolution process to determine whether it is addressing the concerns that are raised within it.

We do not agree with the suggestions that the Department's Student Loan Ombudsman is an appropriate alternative to a State complaints process. The Ombudsman is charged, under the HEA, with the informal resolution only of complaints by borrowers under the title IV, HEA loan programs. By comparison, a State's complaint resolution process would cover the breadth of issues that arise under its laws or regulations.

C . . . : We have amended proposed § 668.43(b) to provide that an institution must make available to a student or prospective student contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

C . . . : One commenter believed that proposed § 668.43(b) under which an institution must provide to students and prospective students the contact information for filing complaints with the institution's State approval or licensing entity should make allowance for situations in which a State has no process for complaints, or defers to the accrediting agency to receive and resolve complaints. Another commenter believed that, in the case of distance education, the institution should be responsible for responding to complaints. Instead of providing students and prospective students, under proposed § 668.43(b), the contact information for filing complaints with the institution's accrediting agency and State approval or licensing entity, the commenter recommended that the institution provide students with the institution's name, location, and Web site to file complaints.

D . . . : We do not agree that proposed § 668.43(b) needs to make allowance for an institution in a State without a process for complaints, since every State is charged with enforcing its own laws and no institution is exempt from complying with State laws. If no complaint process existed, the institution would not be considered to be legally authorized. With respect to an institution offering distance education programs, the institution must provide, under § 668.43(b), not only the contact information for the State or States in which it is physically located, but also the contact information for States in which it provides distance education to the extent that the State has any licensure or approval processes for an institution outside the State providing distance education in the State.

C . . . : None.

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C . . . : In general, commenters expressed concerns regarding legal authorization by a State in circumstances where an institution is physically located across State lines as well as when an institution is operating in another State from its physical location through distance education or online learning. One commenter urged the Department to include clarifying language regarding a State's ability to rely on other States' authorization in the final regulation rather than in the preamble. Several commenters requested that the Department limit the State authorization requirement in § 600.9 to the State in which the institution is physically located. One commenter believed that a State should only be allowed to rely on another State's determination if the school has no physical presence in the State and the other State's laws, authority, and oversight are at least as protective of students and taxpayers. One commenter asked whether the phrase "the State in which the institution operates" is the same as "where the institution is domiciled". The commenter asked for clarification of the meaning of "operate" including whether it means where online students are located, where student recruiting occurs, where an instructor is located, or where fundraising activity is undertaken. One commenter requested that the Department clarify and affirm that reciprocity agreements that exist between States with respect to public institutions operating campuses or programs in multiple States are not impacted by these regulations. Another commenter believed that the Department should issue regulations rather than merely provide in the preamble of the NPRM that a State is allowed to enter into an agreement with another State. One commenter asked whether an institution that operates in more than one State can rely on an authorization from a State that does not meet the authorization requirements. One commenter urged the Department to clarify that States may rely on the authorization by other States, particularly as it relates to distance education. One commenter stated that the proposed regulations would be highly problematic for students who transfer between different States. Another commenter feared that large proprietary schools that are regional or national in scope would likely lobby States to turn over their oversight to another State where laws, regulations, and oversight are more lax. Another commenter was concerned that for-profit institutions may lobby a State to relinquish its responsibilities to a State of those institutions' choosing. This situation could result in a State with

institution does have physical locations to rely on the information the other States relied on in granting authority. In this case, the commenter recommended that the oversight be at least as protective of students and the public as those of the State, and the State should consider any relevant information it receives from other sources. However, the commenter thought the State should retain authority to take independent

status, but the three classes passed in the fall would not be included in determining the student's enrollment status for the spring semester for purposes of the title IV, HEA programs. We believe these revisions are necessary to limit potential abuse from courses being retaken multiple times, while providing institutions sufficient flexibility to meet the needs of most students.

We would also note that an institution's satisfactory academic progress policy could further limit a student from retaking coursework, because the credits associated with any course the student retakes count toward the maximum time-frame requirement.

The regulations do not affect the one-year academic limitation on noncredit and reduced-credit remedial coursework under § 668.20(d) and (f). For example, if a student repeats a remedial course that exceeds the one-year limitation, the course could not be considered in the student's enrollment status.

C , : We have revised the definition of i i i in § 668.2(b) to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student's failing other coursework.

C i : One commenter recommended that the change in the definition of i i i should be expanded to include nonstandard-term and nonterm programs.

D : Since the change in the definition applies to all term-based programs, the change would apply to standard terms, including semesters, trimesters, and quarters, as well as nonstandard terms. Under the definition of a i i in § 668.4(c), a student's coursework is divided into payment periods based on the hours and weeks of instructional time in the program. In general, under these nonterm provisions a student must successfully complete the credit or clock hours in a payment period to advance to the next payment period, and may not be paid for repeating coursework regardless of whether the student successfully completed it unless the provisions of § 668.4(g) apply.

C , : None.

. A / . . (668.5 / 668.43)

G i

C i : Several commenters agreed with the proposed regulations relating to written arrangements. One commenter commended the Department's proposals on this topic, noting that they strike a fair balance in the presence of many minutia-driven concerns. Some commenters stated that the proposed changes eliminate inconsistencies that exist in the current regulations and provide better information to students while allowing institutions to determine the best way to disseminate the required information. Other commenters stated that they agreed with the proposed changes in §§ 668.5 and 668.43 because if an eligible institution enters into a written arrangement with another eligible institution, under which the other eligible institution provides part of the educational program to students enrolled in the first institution, it is important for all parties to have a clear understanding of which institution is providing the credential and the majority of the education and training.

D : We appreciate the commenters' support of the proposed changes reflected in §§ 668.5 and 668.43.

C , : None.

i ii A i , i B i , i M i E , : I i i i (668.5( ))

C i : Some commenters objected to the Department's assertion—in the preamble of the NPRM (75 FR 34806, 34815)—that students who want to take more than 50 percent of an educational program at another institution could transfer to the institution that provides the preponderance of the program's coursework. One commenter stated that students should be allowed to take courses at more than one campus of eligible institutions that have a written arrangement without needing to go through unnecessary activities related to transfer of credit.

Several commenters disagreed with the proposed changes reflected in § 668.5(a)(2)(ii). First, they argued that imposing a limitation on the portion of an educational program one institution can provide under a written arrangement is not consistent with the purpose of consortium agreements, which is to allow students to obtain a degree or certificate from their institution of choice while allowing them to satisfy course requirements by taking courses delivered by another institution. Second, the commenters disagreed with the limitation because we do not place similar restrictions on institutions when they accept transfer students who have earned more than half of the credits that will go toward their educational program at another institution. Finally, the commenters argued that more students are attending multiple institutions before completing their degree or certificate programs and a requirement that the credential-granting institution must provide 50 percent of the individual student's educational program would be a barrier to the students' postsecondary success.

In addition, a few commenters noted that current articulation agreements allow students to further their education at another institution that may accept enough credits on transfer that the student has less than 50 percent of the program remaining to be completed. Some commenters expressed the view that the proposed regulations governing written arrangements should not apply to articulation agreements while others sought clarification of whether the Department's position is that they do apply to such agreements. Commenters expressed concern that the proposal would result in undue hardship and fewer opportunities for students in small communities who take a portion of their coursework locally. One commenter asked whether the proposed changes reflected in § 668.5 affect students who obtained college credit while still in high school.

D : There appears to be some confusion about the scope of the proposed changes to § 668.5. Under proposed § 668.5(a)(1), eligible institutions that are not under common ownership may enter into a written arrangement (which may include the type of consortium agreements mentioned by the commenters) under which the non-degree-granting institution offers part of the degree-granting institution's educational program; this provision does not impose a specific limitation on the portion of the educational program that may be offered by the non-degree-granting institution. In contrast, under proposed § 668.5(a)(2)(ii), if a written arrangement is between two or more eligible institutions that are under common ownership (. ., are owned or controlled by the same individual, partnership or corporation), the degree- or certificate-granting institution must provide more than 50 percent of the educational program. In this situation, a student is considered a regular student at the degree- or certificate-granting institution while taking a portion of the educational program at another institution under common ownership. Under this regulatory framework, a consortium agreement between two eligible institutions that are not under common ownership is not subject to the 50 percent limitation in § 668.5(a)(2)(ii).

Moreover, § 668.5(a) does not apply to articulation agreements under which

institutions agree to accept credits when students transfer from one institution to another, or to cases where individual students transfer to a different institution to complete their educational programs. Students who enroll in an institution and have college credits accepted on transfer that were earned while in high school also do not come within the scope of this regulation.

C: None.

C: A number of commenters disagreed with proposed § 668.5(a)(2), which has the effect of limiting the relative portions of an educational program provided by more than one institution under the same ownership or control. Some commenters argued that the limit is arbitrary and inappropriate because—for all intents and purposes—institutions under common ownership are the same. A few commenters suggested that the regulations should focus more narrowly on the institutions with problems as opposed to all institutions under common ownership. Some commenters were unclear about what constitutes "common ownership" and what types of written arrangements are subject to the 50 percent limitation in § 668.5(a)(2)(ii).

Some commenters indicated that the proposed regulations should apply to all institutions and not apply only to for-profit institutions. Several commenters expressed concern about the applicability of this provision to the many written arrangements between public institutions within a State and whether a State is considered to "own" all of its institutions. Other commenters asked the Department to clarify that public and private nonprofit institutions are not covered by the proposed language in § 668.5(a)(2).

In addition, commenters raised concerns about the potential impact these regulations could have on students who move to another area and want to transfer to another location of the same institution. One commenter stated that the proposed change would discourage students who finish a program from transferring to another institution under the same control for a higher level program.

Some commenters objected to the Department's assertions in the preamble of the NPRM that written arrangements are used by institutions under common ownership to circumvent other regulations and argued that the Department provided only anecdotal evidence to support the proposed changes in § 668.5. Commenters stated that institutions that are circumventing the current regulations will find other opportunities to do so and should face sanctions under the misrepresentation provisions.

D: As indicated in the preamble to the NPRM, the Department focused its regulatory changes on the types of institutions and situations where problems have been identified rather than expanding a requirement for accrediting agencies to review written arrangements between institutions under common ownership. We modeled these regulations on the language in § 668.5(c)(3)(ii)(B), regarding written arrangements between an eligible institution and an ineligible institution or organization because that section of the regulations refers to institutions that are owned or controlled by the same individual, partnership, or corporation.

We do not agree with the commenter

institutions under common ownership

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students to take coursework at another institution or whether they apply to institutions that enter into arrangements when students choose to take coursework at another institution. The commenters stated that if the notifications apply to both situations, the regulations would create an overwhelming burden for institutions. These commenters expressed concern that this burden would result in institutions limiting the use of written arrangements and that this, in turn, would result in less choice for students.

D , : We appreciate the support for requiring additional disclosures regarding the portion of a program being provided by a different institution and the additional costs that a student may incur under such an arrangement. We agree that these disclosures should be clear and understandable. While we agree that providing the Web site of the non-degree-granting institution in the disclosures may be helpful to students, on balance, we determined that requiring that particular disclosure is not necessary and that the decision to include such information in the disclosure should be left to the degree-granting institution's discretion.

As noted by the commenters, the required disclosures include disclosure of the estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under a written arrangement. Therefore, when the coursework provided through the written arrangement is provided online, it would be appropriate to include estimated additional costs such as the costs of purchasing a computer and obtaining Internet access.

their face, appear to demonstrate compliance with the first safe harbor, which permits compensation schemes that are not "solely" based on the number enrolled. However, the Department has been repeatedly advised by institutional employees that these other qualitative factors are not really considered when compensation decisions are made, and that they are identified only to create the appearance of title IV compliance. It is clear from this information that institutions are making actual compensation decisions based exclusively on the numbers of students enrolled.

The Department's need to look behind the documents that institutions allege they have used to make recruiter compensation decisions requires the expenditure of enormous amounts of resources, and has resulted in an inability to adequately determine whether institutions are in compliance with the incentive compensation ban in many cases.

For these reasons, we believe it is appropriate to remove the safe harbors and instead to require institutions to demonstrate that their admissions compensation practices do not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV,

financial aid. If it is not, such compensation would continue to be permissible even with the removal of the safe harbor from current § 668.14(b)(22)(ii)(C).

C : None.

C i :

compliance with the new regulatory language. To the extent an institution has questions about what it intends to do, the Department has offered the two-part test as an aid to reaching a proper conclusion. To the extent that an institution does not wish to use the test to assist it in evaluating its practices, it is not required to do so.

*C : None.

*O *: A number of commenters questioned the use of the term "indirectly" in the prohibition on incentive compensation in proposed § 668.14(b)(22). They expressed concern about the broad scope of this term and believed that interpretive discord will result from its inclusion in § 668.14(b)(22). These commenters argued that any compensation involving an institution of higher education is based indirectly on success in securing enrollments and asked how far removed an activity must be in order for it not to be considered indirectly related. Other commenters specifically requested that we define the term

in the prohibition on

employees could be rewarded through profit-sharing or other payments for success in meeting retention, graduation, and placement goals as long as they are not rewarded for the number of students recruited and admitted. These commenters requested that we define an acceptable percentage of an employee's compensation adjustment that can be based on the number of students recruited, admitted, enrolled, or awarded financial aid.

One commenter asked that we clarify whether payments tied to overall institutional revenues, including profit-sharing, pension, and retirement plans are allowed. A number of commenters asked more broadly whether such plans would be permissible. A few commenters requested changes to incorporate the distribution of profit-sharing or bonus payments under certain circumstances, such as when a payment is made to a broad group of employees.

D *:* While there is no statutory proscription upon offering employees either profit-sharing or a bonus, if either is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, it is not permitted under section 487(a)(20) of the HEA or § 668.14(b)(22).

The Department agrees with commenters that there are circumstances when profit-sharing payments should be permitted. Under proposed § 668.14(b)(22), an institution may distribute profit-sharing payments if those payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds. The Department believes that such payments are consistent with the HEA as they are not being made to a particular group who is active in admissions or financial aid.

For this reason, we are making a change to § 668.14(b)(22)(ii) to provide that institutions may make payments, including profit-sharing payments, so long as they are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

C *:* We have revised § 668.14(b)(22)(ii) to clarify that, notwithstanding the ban in § 668.14(b)(22)(i), eligible institutions, organizations that are contractors to eligible institutions, and other entities may make profit-sharing payments, so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

C *:* Several commenters asked us to clarify what kinds of activities would not be considered under the definition of . They asked that we revise the regulations to provide explicitly that payments based on any additional activities are not allowed if they are directly or indirectly based on enrollment or the awarding of aid.

Other commenters raised questions about the use of "aggregators," that is, entities that assist an institution with the institution's outreach efforts. These efforts include but are not limited to, identifying students, offering counseling and information on multiple institutions, and encouraging potential students to fill out an application directly with the individual institutions. Aggregators are paid based on the student remaining at the institution for a certain time period rather than based on the fact that the student enrolls. Commenters asked us to clarify whether these practices are permitted under section 487(a)(20) of the HEA and § 668.14(b)(22).

Some commenters focused on arrangements under which institutions pay third parties for student contact information and asked whether such information may be sorted or qualified. Further, they questioned whether institutions would be permitted to pay only for information that yields actual contact with a student. They asked that we confirm that institutions may pay students for contact information on a per person basis as long as payments are not based on the number of students who apply or enroll. In addition, they suggested that we allow qualitative factors to be included in the consideration of the price to provide incentives to third parties to appropriately identify students that more closely fit an institution's profile.

Some commenters believed that the proposed definition of does not make it clear that the activities are prohibited through the completion of a student's educational program.

D *:* The Department agrees that it would be helpful to clarify the type of activities that are and are not considered securing enrollments or the award of financial aid. For this reason, we have revised the definition of securing enrollments or the award of financial aid to specifically include (as examples) contact through preadmission or advising activities, scheduling an appointment for the prospective student to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application (see § 668.14(b)(22)(iii)(B)(*1*) of these final regulations).

We also revised the definition to clarify that it does not include making a payment to a third party for the provision of student contact information provided that such payment is not based on any additional conduct by the third party, such as participation in preadmission or advertising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing of a prospective student's enrollment agreement or financial aid application (see § 668.14(b)(22)(iii)(B)(*2*) of these final regulations).

With respect to the comments requesting guidance on "aggregators," we do not believe it is necessary or appropriate for the Department to indicate whether these types of activities would, across the board, be permitted. Each arrangement must be evaluated on its specific terms. As noted earlier in this preamble, we believe any institution can determine whether a payment it intends to make is prohibited by § 668.14(b)(22) by applying the two-part test we have described. Specifically, the first step for an institution in determining if payment for an activity or action is considered incentive compensation is to evaluate whether the entity is receiving something of value, then to determine whether the payment is made based in any part, directly or indirectly, on success in securing enrollments or the award of financial aid.

Finally, we agree with commenters that the definition of the term should be revised to specify that these activities include activities that ru/T10he

only broadly applicable principles rather than responding to questions on individual compensation issues. These commenters asserted that institutions need guidance before they should be the subject of an investigation or legal action. They raised concerns about the confusion that could result without additional clarification and the attendant costs to partners in the student aid process in "today's legal environment." They believed that the Department already knows that guidance will be needed based on our pre-2002 experiences and noted that issuing guidance is a fundamental purpose of the Department and should be continued.

D : The Department believes the proposed language is clear and reflective of section 487(a)(20) of the HEA. As modified, it is designed to appropriately guide institutions as they evaluate compensation practices. To the extent that ongoing questions arise on a particular aspect of the regulations, the Department will respond appropriately in a broadly applicable format and will distribute the information widely to all participating institutions. This response may include a clarification in a Department publication, such as the Federal Student Aid Handbook or a Dear Colleague Letter. The Department does not intend to provide private guidance regarding particular compensation structures in the future and will enforce the regulations as written.

C : None.

A (668.16(.), 668.32( ), 668.34)

G

O : Many commenters supported the proposed changes to the Satisfactory Academic Progress (SAP) regulations. Several commenters noted that the consolidation of the SAP requirements into § 668.34 would ease compliance and suggested that it would be helpful to revise the Federal Student Aid (FSA) Handbook to mirror the new organization of the requirements in the regulations.

Several commenters noted that they appreciated that the proposed SAP regulations retain the flexibility provided under the current regulations for institutions to establish policies that best meet the needs of their students.

Many commenters expressed support for the proposed changes to the SAP regulations because they viewed them as a means for helping hold students accountable for their academic goals earlier in their careers, which they believed would lead to lower student debt levels. Several commenters noted that their current policy and practices either met or exceeded the requirements in the proposed regulations.

Many commenters supported, in particular, the definition of the terms and as well as the standardized definitions of other terms related to SAP. These commenters stated that this standardization would lead to a more consistent application of the SAP regulations among institutions, which, in turn, will make them more understandable to students.

Many commenters also supported the SAP regulations because they give those institutions that choose to evaluate SAP more frequently than annually the ability to use a financial aid warning status, which they viewed as being beneficial to students. They stated that such a warning would lead to early intervention for students who face academic difficulties. Commenters also noted that the financial aid warning status will allow financial aid offices to strengthen their SAP policies to encourage students to use designated support services on campus and lead to further student success.

D : The Department appreciates the support of its efforts to improve program integrity through its SAP regulations. With regard to the comment recommending that we revise the FSA Handbook to align it with the changes we have made in the SAP regulations, we will take this recommendation into account during the next revision of the FSA Handbook.

C : None.

G

O : Several commenters did not support the proposed changes to the SAP regulations. Two commenters stated that the Department should delay implementation of the SAP regulations, including proposed § 668.34, so that we can resubmit these proposals for negotiation and evaluation in a future negotiated rulemaking proceeding. These commenters argued that the Department had not made a sufficient argument for what would be gained by the changes, and how these benefits would justify the additional burden imposed upon institutions by these regulations.

Two commenters stated that institutions were in the best position to design and implement a satisfactory academic progress policy that fit their institutional needs, and that the current regulations were sufficient for achieving this purpose. These commenters asserted that the proposed changes were intrusive and would lead to increased audit exceptions. These commenters also noted that the Department should consider incentives to encourage institutions to research student success in light of their own SAP policies. One commenter stated that the proposed regulations were too prescriptive, and that institutions would require significant guidance in the FSA Handbook in order to be able to comply with the new regulations.

Two commenters stated that while they generally agreed with the Department's desire to clarify the SAP regulations and with the proposed approach reflected in the NPRM, the regulations had a number of unintended consequences. These commenters indicated that the Department's proposal would force institutions to choose whether to take on additional workload by evaluating students each term, or to take on the additional workload caused by the dramatic increase in appeals. One of the commenters noted as an example an institution that has a number of Alaskan Native students to whom it provides significant support, particularly early in their careers; in this case, the commenter stated that these students would be significantly harmed by these SAP regulations as the students often cannot remedy their academic problems in a short period of time. Both of these commenters noted that while the Department believes that it has to address abuses with the current regulations, that it should weigh this against the unintended consequences of the proposed regulations, which include increased workload for institutions and unfair impact on certain groups of students.

D : The Department disagrees with the commenters who suggested that these regulations should be resubmitted for the negotiated rulemaking process. The proposed changes to the SAP regulations in §§ 668.16(e), 668.32(f), and 668.34 have already been through the negotiated rulemaking process. In fact, the negotiators reached tentative agreement on these proposed changes. During negotiations, most negotiators stated that it was appropriate for the Department to provide certain flexibilities for those institutions that choalEWawncrease P a satisfactory academic progreps he studenmoquire cunera. Many regulatiobead cahat yaed luaargueothe significa*(fle

while still preserving program integrity. For the commenter who suggested that the Department should encourage institutions to study the consequences of their SAP policies and allow incentives for doing so, we will take this under advisement when we next have the opportunity to develop experimental site proposals.

We do not agree with the commenters who suggest that the SAP regulations are too prescriptive or intrusive. Section 484(c)(1)(A) of the HEA requires that an eligible student be making satisfactory progress towards program completion, and that institutions check at least annually for programs longer than a year, that a student is annually meeting that requirement. These regulations do not require institutions to do any more than what is required by the HEA, and are not more difficult to comply with than the current regulations. Therefore, institutions should not experience increased incidents of noncompliance. We will continue to provide any applicable and needed guidance in the FSA Handbook to assist institutions in complying with the regulations.

We do agree with the commenters who stated that an increase in SAP monitoring to a payment period by payment period basis would increase administrative burden. However, institutions are free to continue to monitor as frequently as they currently do, and are not required to change their SAP policy and monitor every payment period. As for the unintended consequences for particular groups of students, these regulations allow for institutions to craft SAP policies that best fit the needs of their students. An institution could evaluate the needs of any special student groups and find ways to work effectively with those students. For example, a specific student may need to have assistance developing an academic plan that will enable him or her to be successful.

C , : None.

D I i i

C i : Several commenters suggested that implementation of the proposed changes to §§ 668.16(e), 668.32(f) and 668.34 should be delayed for a couple of years to allow institutions to prepare their policies and procedures to comply with the regulatory changes. One commenter recommended that implementation be delayed until the 2012–13 award year to allow for institutions to make changes to their monitoring systems. Another commenter encouraged the Department to delay implementation of the regulations for SAP, but noted that if we do not delay implementation, then the Department should issue guidance as to how the new regulations will affect summer crossover payment periods. This commenter expressed concern that, without this additional guidance, it will be unclear as to which SAP regulations apply to students enrolled in summer.

D : While the Department appreciates that some institutions may have to make changes to computer monitoring systems, or written policies and procedures, we do not believe that the changes to the SAP regulations are extensive enough to warrant delayed implementation. Institutions that may have to adjust or change their SAP policy will have to publicize such a change to students, and let students know when any new SAP policy is effective. As such, the summer crossover payment period would be addressed by the school's new policy and would be subject to the effective date of the school's new policy. For example, a school may decide that for the purpose of this policy change, a 2011–12 summer crossover period will be subject to their current SAP policy

category when measuring pace towards completion for each SAP evaluation period.

C : None.

O : One commenter recommended that the Department revise § 668.34(a) to require transfer credits to be considered when determining progress towards maximum timeframe, but not for purposes of determining the pace of completion for each evaluation period. This commenter stated that counting transfer credits when looking at each evaluation period would give transfer students an unfair advantage in the pace to completion calculation.

Another commenter noted that the practice of excluding courses that were not degree applicable from the pace calculation for evaluating SAP has prompted many students to change majors in order to retain financial aid eligibility. The commenter opined that this practice leaves the door open to abuse of the system. Additionally, the commenter stated that the Department should require that all courses that the student had attempted and completed in his entire career be included in the pace computation for purposes of determining the student's progress toward program completion.

D : The Department acknowledges that transfer students may have a slight advantage over other students when an institution calculates their pace toward program completion. However, this inclusion of transfer credits in the calculation of pace will allow for a more level playing field for all students, and standardize treatment of completed credits in the SAP evaluation. This is because including transfer credits in the calculation of pace means we are considering all completed work for all students.

We also note that the Department has had a longstanding policy that institutions are free to set their own SAP policy that deals with major changes as they relate to measurement of maximum timeframe. Therefore, if an institution wishes to limit the number of major changes that it will allow a student, then it is free to set a policy that does so.

C : None.

F A P F A :

O : Many commenters found the definitions of the terms and in proposed § 668.34(b) to be helpful. These commenters stated that it was very useful to have standard vocabulary to use when discussing SAP. Some commenters noted that these terms and concepts matched their current policy while others requested slight changes to the terms or definitions so that they align more closely with their own institution's policies. Several commenters sought clarification, however, as to whether institutions are required under these regulations to use the newly defined terms of and in their consumer information and other communications with students, or whether we would allow them to continue to use their current terminology. These commenters expressed concern that their students might be confused if they changed the terminology used in this area.

D : The Department intends to allow institutions to have as much flexibility as possible in developing an appropriate SAP policy for their institution as well as consumer information materials for their students. However, institutions must incorporate these regulations changes into the information that they provide to students; this includes ensuring that the information made available by the institution uses the terminology used in these regulations.

C : None.

O : Several commenters expressed support for the adgmxtsrormt T*(these regulat1 Tf4Aa ancial aid proning)Tj/T1(stu

disbursement of aid until the student has successfully completed the previous payment period. For such programs, if an institution places the student on financial aid warning, the student will either complete the program or withdraw. If the student completes the program, then he or she has been successful. If he or she withdraws, then the return of funds requirements in § 668.22 will apply. In either case, the student received only those funds for which he or she was eligible. We do not plan to make any changes in this area.

C , : None.

A

C i : Many commenters agreed with allowing students who would otherwise lose eligibility for title IV, HEA aid to appeal the loss of eligibility. Some commenters expressed concern that the requirements for an appeal were too prescriptive; for example, the commenters noted that § 668.34(b) requires that students articulate what had changed in their situation and that students might not be able to comply with this requirement. Other

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to degree completion under an institution's academic criteria. The Department also wishes to clarify that the 150 percent maximum timeframe applies only to the student's current program of study. Under these regulations, institutions retain flexibility to define their programs of study in their SAP policy, as well as how they will determine how previously taken coursework applies to the student's current program of study.

C : None.

N

O : Several commenters requested clarification of the notification requirement in § 668.34(a)(11). Specifically, these commenters questioned whether this

issues such as foreign postsecondary schools, defunct schools, and

responsible for submitting the names of secondary schools.

C , : None.

O i : A couple of commenters distinguished between a high school diploma and a transcript, and suggested that a transcript is more valuable for institutions to use to determine the validity of the student's high school completion. Another commenter noted that transcripts and diplomas are not interchangeable and that the Department should clarify this.

D : We agree that a high school transcript is not the same as a diploma. It is the latter that is required under the student eligibility regulations and the statute, not the former. A transcript may be a valuable tool in determining whether a high school diploma is valid because by listing the courses the student completed, it demonstrates the extent of his or her secondary school education.

C , : None.

O i : One commenter seemed to think that an institution would submit documentation to the Department for review if a student was chosen for verification due to not answering the FAFSA questions about his or her high school diploma.

D : The Department does not plan to require institutions to submit individuals' high school documentation for validation. Moreover, the Department does not intend to select applicants for verification just because they did not complete the high school diploma questions on the FAFSA.

C , : None.

O i : A few commenters suggested that institutions should not be considered to have reason to believe that an applicant's high school diploma is not valid or was not obtained from an entity that provides secondary school education, unless the information from FAFSA processing suggests that. These commenters argued that institutions should not be obligated to investigate whether every applicant's high school diploma is valid, nor should the institution be required, if it is an institution that collects diploma information as part of the admissions process, to cross-check that information against the information from the FAFSA because that would be too burdensome.

D : For the 2011–2012 award year, we will not provide any additional high school diploma information on the Institutional Student Information Record (ISIR) beyond what the student submitted on the FAFSA. We will not expect institutions to check the ISIR high school data for every student against other information obtained by the institution during the admissions process. However, if an institution has reason to believe (or the Secretary indicates) that a high school diploma is not valid, the institution must follow its procedures to evaluate the validity of the diploma.

C , : None.

O i : One commenter requested that the Department declare that § 668.16(p) will not be retroactive.

D : This requirement will apply to institutions beginning on July 1, 2011, the effective date for these regulations. This means that institutions will be required to follow the procedures developed under § 668.16(p) for any applicant who completes a FAFSA beginning with the 2011–2012 award year.

C , : None.

O i : Several commenters requested that we allow FAAs to forego diploma validation for students who have completed six credits of college coursework that applies to a program of study at the institution or if the student's ability to be admitted to the institution or eligibility for title IV, HEA aid is otherwise not affected.

D : It is correct that a student without a high school diploma would be eligible for title IV, HEA aid if he or she meets one of the other academic criteria, such as successfully completing six credits or 225 clock hours of college-level coursework that apply to a program at the current institution. However, because students have that flexibility does not obviate the requirement that for an institution to be eligible, it must admit as regular students only those with a high school diploma, or the recognized equivalent, or who are beyond the age of compulsory school attendance.

C , : None.

O i : One commenter asked that if the Department permits waivers to the requirement in § 668.16(p) to follow procedures to check the validity of a high school diploma, that institutions, in particular those that do not admit students without a diploma or the equivalent, be permitted to evaluate the validity of a diploma if they choose.

D : There will be no waivers of the requirement that an institution must evaluate the validity of a high school diploma when it or the Secretary has reason to believe that the diploma is not valid or was not obtained from a school that provides secondary school education.

C , : None.

O i : One commenter asked that we interpret section 123 of the HEA (20 U.S.C. 1011l) to apply to high school diploma mills as well as college diploma mills.

D : This section of the HEA provides that the Department will, among other things, maintain information on its Web site to educate students, families, and employers about diploma mills and that it will collaborate with other Federal agencies to broadly disseminate to the public information on how to identify diploma mills. While section 105 of the HEA (20 U.S.C. 1003) defines diploma mill only in terms of postsecondary education, we intend to examine the issue of high school diploma mills further.

C , : None.

O i : One commenter urged the Department's Office of Inspector General to be actively engaged with other agencies in detecting fraud, especially given that high school diploma mills may adopt names of legitimate schools.

D : The Department's Office of Inspector General will continue to work with other agencies as appropriate to detect fraud in this area.

C , : None.

O i : One institution commented that it finds it difficult to explain to students who present questionable high school credentials why those credentials are not sufficient for receiving title IV, HEA aid.

D : In a situation such as this, we believe that it would be appropriate for the institution to explain to students the concept of a high school diploma mill, . ., an entity that offers a credential, typically for a fee, and requires little or no academic work on the part of the purchaser of the credential. We believe that students with a credential from a diploma mill would not have a sufficient educational foundation for success at the postsecondary level and should not receive title IV, HEA aid.

C , : None.

O i : One commenter urged the Department to clarify that the diplomas of high schools that are not accredited are not necessarily invalid under § 668.16(p). Several commenters asked whether a new high school that was operating but had not yet received accreditation would be acceptable under this regulation. A small private high school expressed concern that the new provision would hinder its students from going to college because it is not accredited and this provision may be misinterpreted to mean that non-accredited high schools are not acceptable. The school asked that we disabuse the public of the mistaken notion that for students to receive title IV, HEA aid, their high school diplomas must be from accredited schools.

D *:* Diplomas issued by high schools that are not accredited (more common among private than public high schools) often meet college admissions standards and are generally acceptable for receiving title IV, HEA aid. We have noted for several years in the Federal Student Aid Handbook that high schools do not need to be accredited for their diplomas to be acceptable for title IV, HEA eligibility. The Department's recognition of accreditation exists only at the postsecondary level.

C *:* None.

O *:* One organization representing colleges suggested that we should not remove a high school from any list we create if that school closes.

D *:* We do not plan to remove closed schools from a list.

C *:* None.

O *:* One commenter expressed concern that because many for-profit colleges do not require proof of a high school diploma (many require only that the applicant provide a signed statement of high school completion), they will not be diligent when evaluating the validity of their applicants' high school diplomas.

D *:* Whether any institution fails to appropriately investigate the validity of a student's high school completion will be determined in program reviews, audits, and other Department oversight processes.

C *:* None.

O *:* One commenter claimed that institutions are not qualified to determine the quality of anyone's high school diploma, education, or secondary learning.

D *:* We disagree with this commenter. Section 668.16(p) only requires that institutions develop and follow procedures to determine the validity of a student's high school completion when they or the Secretary have reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. We do not believe that an institution will need any unique qualifications to make this determination; as noted earlier, many institutions already evaluate the high school completion of students during the admissions process.

C *:* None.

O *:* One commenter opined that using a list of unacceptable schools is a less effective method of dealing with high school validation, and that the best method would be to have a large database of all high school graduation records.

D *:* While we appreciate the commenter's suggestion, we do not believe that the creation or use of a single database of all graduation records from the entire country is feasible.

C *:* None.

O *:* One commenter stated that some institutions do not have the resources to evaluate the validity of high school diplomas and that the Department should make those determinations with the help of appropriate State agencies.

D *:* We believe that administrators at institutions, who have direct contact with applicants, are in the best position to evaluate the validity of high school completions. We will issue further guidance on how to make those evaluations efficient and will try to minimize the administrative burden on institutions.

C *:* None.

O *:* One commenter claimed that the Department wants to keep the list of acceptable high schools secret to avoid having to defend its inclusion of the schools on the FAFSA list.

D *:* As noted earlier in this preamble, FAFSA on the Web will include a list of schools to help students fill out the application; it will not be a list of acceptable schools. It will be available to the public via FAFSA on the Web, though whether it e two t11ight d cont*(f)Tjvoid*(fill help of)TjcttrerHringLTd(Asee are ial a list . These -0.0045 Ts0 Tdapplno996 0 Td of

D *:*

completed high school and obtained a valid high school diploma might still not be ready for college. The commenter stated that the Department should focus instead on improving secondary school education and not connect title IV, HEA eligibility to the high school credential until the work of improving high schools has been completed.

D : Improving high school education is an important objective of the Secretary; however, the Department does not consider it necessary to refrain from requiring institutions to develop and follow procedures for evaluating the validity of high school diplomas until the task of improving high school education nationwide has been completed. And we believe verifying the validity of high school diplomas is necessary to ensuring compliance with the eligibility requirements for the receipt of title IV, HEA aid.

C : None.

O : One commenter suggested that because § 668.16(p) does not require documentation of a diploma or graduation from an applicant's high school directly, the fraud surrounding this issue will just switch to the use of fraudulent diplomas or transcripts purportedly from legitimate high schools. Also, this commenter pointed out that it will be easy for unscrupulous college employees to skirt this requirement by telling students to simply list the name of a legitimate school or where to get a forged diploma, just as recruiters now tell students where they can buy a high school diploma.

D : Institutions are free to request that documentation come directly from the high school. We also acknowledge that it will be impossible to eliminate all potential fraud, yet we believe that the extra step of requiring validation under § 668.16(p) will help to eliminate some of it. As we noted in the preamble to the NPRM, the Department has other avenues for addressing fraudulent activities committed at an institution.

C : None.

O : One commenter noted that when an institution is evaluating the validity of a student's high school education and his or her diploma or transcript is not available, it should be able to accept a certified statement from the student that serves as documentation of graduation and explains why the student could not obtain a copy of the diploma.

D : A certified statement from a student is not sufficient documentation of this requirement. It should be rare that students cannot provide a copy of either their high school diploma or final transcript, and there might be such instances where an institution can still validate a student's high school education without a copy of the diploma or transcript. But FAAs should remember that there are established alternatives for a high school diploma, such as the GED certificate or ATB test.

C : None.

O : One commenter suggested that the Department should determine if a significant number of students indicated they had valid diplomas, when they, in fact, did not. The commenter recommended that the Department make § 668.16(p) voluntary or require compliance through a pilot program because building and maintaining an accurate database will be difficult and students will make mistakes that could delay their eligibility for a semester, a year, or a whole degree program.

D : We do not plan to make compliance with § 668.16(p) voluntary or part of a pilot program. We expect that delays resulting from evaluation of high school diplomas will be minimal or nonexistent.

C : None.

O : One commenter stated that the new FAFSA questions on high school completion should be required and that students should not be able to enter an invalid school, or leave the questions blank.

D : As noted earlier, we intend to require that students who indicate that they have a high school diploma also give the name of the school that awarded the diploma and the city and State in which the school is located. They will be able to select a school from the Department's list or be prompted to write in the name of the school. Students will be unable to complete the online FAFSA unless they provide this information.

C : None.

O : Commenters noted that, even if students indicate that their diploma is from an acceptable school, it does not prove the student actually graduated from that school. These commenters argued that proposed § 668.16(p) is not an improvement to the current practice, and that the extra step required under the new regulatory provision will not help for institutions that do not require a diploma for admission.

D : The proposed change reflected in § 668.16(p) is designed to reduce the number of students who indicate that they have a high school diploma, but who do not, or who only possess a credential from a "diploma mill." We believe that many students with such credentials will indicate the name of the entity they received it from, either because they honestly believe they have a legitimate high school diploma or because they will be reluctant to provide the name of a school they did not graduate from because the financial aid office will easily be able to determine that such a statement is false. All institutions, including those that do not require a high school diploma for admission, will be subject to the requirements in § 668.16(p) and, therefore, will need to evaluate the credentials supplied by students as proof of high school completion if they or the Department has reason to believe the credential is not valid. We believe that this required process will reduce the number of bad credentials.

C : None.

O : One commenter suggested that unless the Department clarifies what is a valid high school diploma, it should not, as part of a program review, substitute its judgment for an institution's determination. The commenter argued that if an institution acted reasonably, the eligibility of a student should not be questioned, even if the Department, or another school, reaches a different conclusion about the high school the student attended. Another commenter asked that the Department make clear in this preamble that institutions may change their determinations about a given high school. New information may move a school from the "good" list to the "bad" one, or vice versa. The commenter wanted to ensure that the Department does not dissuade institutions from making such adjustments by deeming that a later determination indicates an earlier one was inappropriate.

D : We do not plan to second-guess the decisions of college administrators in these matters, such as moving a high school from a "good" list to a "bad" list (or vice versa), as long as they are reasonable.

C : None.

O : One commenter stated that it was not fair to require students to provide a high school diploma because, in the commenter's experience, homeschooled students have only a transcript as proof of completing a secondary school education.

D : As we noted earlier in this preamble, the procedure for determining the validity of homeschooled students' education is not affected by § 668.16(p).

C : None.

O : One commenter observed that students in high school special education programs might receive a certificate or award that is not a high

school diploma when they did not complete the required coursework to receive an actual diploma from the school and that these students may incorrectly believe that the certificate or award is a diploma.

D . . : Students who do not complete the required coursework to receive a high school diploma from their secondary school by definition did not earn a high school diploma. These students are not eligible for title IV, HEA aid unless they meet the academic requirement under one of the alternatives to a high school diploma in § 668.32(e), or they are students with intellectual disabilities who are seeking Pell, FSEOG, or FWS program assistance under § 668.233.

C . . : None.

C . . : One commenter asked us to clarify what would cause an institution to have "reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education."

D . . : We expect that there may be a number of situations in which an institution will have reason to believe that an applicant's high school diploma is not valid or was not obtained from an entity that provides secondary school education. For example, institutions may come across information that suggests that the applicant's diploma or transcript was purchased with little work expected of the student. Often FAAs receive conflicting information from students themselves, typically as remarks that cast doubt on some element of the students' application information. We expect the same regarding valid high school diplomas. Moreover, institutions may have reason to believe that a high school diploma is invalid if they recognize the name of the high school as an entity that they identified in the past as being a high school diploma mill.

C . . : None.

C . . : One commenter requested that we add a check box on the FAFSA for applicants who completed secondary school in a foreign country and an empty space for them to fill in the name of their secondary school. The commenter suggested that in this situation, the student's FAFSA would receive a "C" code, not automatically, but at random, so that due diligence would still be required by the institution.

D . . : When completing the FAFSA, applicants will be able to enter the name of their high school if it is not on the Department's drop-down list.

C . . : None.

C . . : One commenter expressed concern that the wording of the second new question proposed for the FAFSA, as noted in the preamble to the NPRM, could be misleading and suggested that the Department use either of the following questions instead:

- In what State is the school listed in question #1 located? or
- In what State was the school in which the student completed high school located?

D . . : As we noted earlier in this preamble, the 2011–2012 FAFSA asks for applicants to indicate the name of the high school where they received or will receive their diploma and the city and State where the school is located.

C . . : None.

A . . (668.22( ), 668.22( ), 668.22( ), 668.22( ))

I , HEA P. F P -B P. M C (668.22( ), 668.22 ( ) 668.22 ( ))

C . . : Approximately 80 commenters, mostly representing institutions, commented on the proposed changes to the treatment of title IV, HEA program funds when a student withdraws from a program offered in modules. Approximately 26 of these commenters opposed the proposed changes, with some commenters recommending that the Department not issue final regulations at this time and instead seek further input from the community.

Many of these commenters believed the proposed changes would be too burdensome to institutions. Several commenters were concerned about the additional administrative and financial burden the proposed changes would impose on institutions by requiring them to identify and process more students as withdrawals. A few commenters believed that, as a result of this burden, the proposed regulations would discourage schools from offering programs in modules, potentially causing disruptive changes in course offerings at institutions. A few commenters believed institutions would be unable to comply with the proposed regulations because they are too complicated or too difficult to explain to students. One commenter believed the proposed regulations would force an institution to delay disbursements to prevent the institution or student from having to return unearned title IV, HEA program funds if the student withdrew.

Many of these commenters also believed that the proposed changes would be harmful to students because some students who withdrew after completing one course in one module would earn less title IV, HEA program funds. In particular, some commenters believed it was unfair to treat as a withdrawal a student who withdrew from a course or courses in the payment period or period of enrollment, but who would attend courses later in the same payment period or period of enrollment, and wanted to know how to handle title IV, HEA program funds in such cases. A few commenters believed the proposed regulations would discourage students from enrolling in programs structured in modules, including compressed courses to accelerate completion of their program, which the commenters believed was in conflict with the provisions for two Federal Pell Grants in one award year, which were implemented to support and make equitable aid available for students who wish to complete their program sooner. A few commenters were concerned that a student who would now be counted as a withdrawal would be burdened with more debt: To the institution for any remaining balance of tuition and fees, and to the Department for Federal loans and or grant overpayments. One commenter noted that treating a student as a withdrawal also has negative consequences for a student under the provisions on satisfactory academic progress and loan repayment.

A few commenters believed the proposed regulations unfairly targeted certain programs or institutions. Some of the commenters believed the proposed changes would treat students in module programs inequitably when compared to students in more traditional programs where courses are offered concurrently. One commenter believed that the proposed regulations would have a disproportionately negative affect for students in career technical programs, as many of those programs are taught in a condensed, modular form. Some commenters believed the proposed regulations unfairly focused on only term-based credit-hour programs.

Approximately 25 of the commenters expressed an understanding of the Department's concern with students receiving full or large amounts of title IV, HEA program funds for a short period of attendance during a payment period or period of enrollment. A couple of those commenters agreed with the proposed changes. Others believed that the current guidance from Dear Colleague Letter of December 2000, GEN–00–24, Return of Title IV Aid-Volume #1—which provided that a student who completed only one module or compressed course within a term was not considered to have

withdrawn—should be incorporated into the regulations. These commenters believed that a student who has earned credits in a payment period or period of enrollment who then ceases attendance should not be treated as a withdrawal, as the existing regulations in 34 CFR 690.80(b)(2)(ii), requiring recalculations of title IV, HEA program funds when a student did not begin attendance in all classes, are a sufficient safeguard against students receiving full or large amounts of title IV, HEA program funds for a short period of attendance in a program offered in modules. Two commenters believed that the satisfactory academic

completed. For example, a student was scheduled to attend an intersession of three weeks of instructional time at the end of a fall semester, and, in accordance with the Department's past guidance, the institution has included that intersession with the fall term for purposes of the program's academic calendar when determining the payment of title IV, HEA program funds. In this circumstance the days in that intersession are included in the total number of days in the payment period for that student, except for scheduled breaks of at least five consecutive days, and days in which the student was on an approved leave of absence. Note that all the courses in the fall term are considered modules for purposes of a Return of Title IV Funds calculation when the intersession is included in the payment period.

Regarding the comment that there would be no possible way for an institution to determine the days the student was scheduled to attend for an on-line class that is self-paced, we note that, for Title IV, HEA program purposes, an institution is required to determine a program schedule for a payment period or period of enrollment.

C , : Section 668.22(f)(2)(ii) has been revised to clarify that, when determining the percentage of payment period or period of enrollment completed, the total number of calendar days in a payment period or period of enrollment does not include, for a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time.

. A . .
(668.22( ) 668.22( ))

C i : Commenters were unsure about the effect of the proposed changes, and a number of them asked for clarification. A few commenters expressed concern that the Department was requiring institutions to take attendance. Others thought that, in instances in which individual faculty members take attendance by choice, the entire institution would then be considered an institution required to take attendance. Some commenters believed that if an institution or an outside entity required attendance taking for students in some but not all programs, then the institution would be considered one that has to take attendance for students in all programs. Other commenters believed that the proposed regulations would require institutions that take attendance for a limited period of time and use those attendance records, to continue to take attendance beyond that point.

Some commenters advocated a more restricted definition of an institution that is required to take attendance, suggesting that an institution should only be required to take attendance if an outside entity collects and maintains those records. One commenter did not believe that an outside entity should be able to require an institution to take attendance, and others opposed the provision that institutions required by an outside entity to take attendance must use these attendance records for the purposes of a Return of Title IV Funds calculation.

In general, we received comments on the application of the regulations to subpopulations of students and on the use of attendance records during a limited period. With respect to attendance requirements for subpopulations of students, most commenters did not object to the current policy that if some students at the institution are subject to attendance taking requirements, then institutions would have to follow the last day of attendance regulations for those students. Other commenters agreed with this position, but believed that this condition should only be applied when taking attendance is required for the entire payment period, for all classes the student enrolls in, and only when imposed by an outside entity. One commenter disagreed with our position on the treatment of subpopulations of students, recommending that we modify the regulations to specify that the taking attendance requirement must be imposed by an outside entity and be applicable to the entire institution in order for an institution to be considered one required to take attendance.

One commenter supported the proposed change that if an institution requires the taking of attendance for a limited period of time, then those attendance records must be used to determine a withdrawal date. A few commenters objected to considering institutions that take attendance during a limited period of time to be institutions required to take attendance, even for only that limited period, suggesting that this provision should only be applied when taking attendance is required for the entire payment period or period of enrollment.

D , : The regulations do not require institutions to take attendance. Instead, under the regulations the Department considers an "institution that is required to take attendance" to include not only an institution that is required to take attendance by an outside entity, but also an institution that itself requires its faculty to take attendance in certain circumstances.

Regarding faculty attendance records, if an institution does not require faculty to take attendance, but a faculty member chooses to take attendance, then the institution would not then be considered an institution required to take attendance. If, however, the institution requires its faculty to take attendance, whether at the program, department, or institutional level, then those attendance records must be used by the institution in determining a student's date of withdrawal. Institutions that do not require the taking of attendance and are not required to take attendance by an outside entity are not prohibited from using individual faculty members' attendance records in determining a student's date of withdrawal. The Department encourages institutions to use the best information available in making this determination.

We do not agree with commenters who believed that if attendance taking is required for some students, then the institution would be required to take attendance for all students. These final regulations do not change our existing policy. Under our current guidance and regulations, if an outside entity requires an institution to take attendance for only some students, for instance, for students receiving financial assistance under a State program, the institution must use its attendance records to determine a withdrawal date for those students. Similarly, under these final regulations, if the institution itself requires attendance taking for students in certain programs or departments, then the institution must use its attendance records to determine a withdrawal date for students in those programs or departments. These attendance taking regulations only apply when an institution either requires the taking of attendance or is required by an outside entity to take attendance, but not when a student is required to self-certify attendance directly to an outside entity. For example, a veterans' benefits requirement that benefit recipients self-report attendance would not result in an institutional requirement to take attendance of those students unless the institution is required to verify the student's self-certification.

An institution that is required by an outside entity to take attendance during a limited period, or that requires its faculty to do so, must use any attendance records from that limited

Department has provided further guidance on this policy in the FSA Handbook, specifying that living in institutional housing and participating in the institution's meal plan are examples of activities that are not academically-related. The Department finds it acceptable for an institution that is required to take attendance to use the institution's records of attendance at the activities listed in § 668.22(l)(7) as evidence of attendance, provided there is no conflict with the requirements of the outside entity that requires the institution to take attendance or, if applicable, the institution's own requirements.

However, in these final regulations, we are revising the list of acceptable activities because the Secretary no longer considers participation in academic counseling or advising to be an activity that demonstrates academic attendance or attendance at an academically-related activity. The Secretary has encountered several instances of abuse of this particular provision by institutions that contact students who have ceased attendance, and treated that contact as "academic counseling" to facilitate a later withdrawal date, resulting in an inflated amount of "earned" title IV, HEA program funds. The Secretary does not view such contact as evidence of academic attendance, but notes that if the student resumed attendance and completed the period of enrollment no return calculation would be needed. Even if the student resumed attendance and later stopped attending, the

that institutions should use the best data available in determining a student's withdrawal date from classes. Accordingly, if an institution requires the taking of attendance or is required to take attendance for any limited period of a semester or other payment period, then those records should be used when determining a student's date of withdrawal for the purposes of a Return of Title IV Funds calculation.

With respect to comments regarding the complexity of the regulations, they address the taking attendance policies that are either required by an outside party or required by the institution itself. Institutions would already be expected to follow these requirements, and the regulations provide for that attendance information to be used when it indicates a student has stopped attending during this limited period. For students in attendance at the end of that limited period, the guidelines for determining a withdrawal date for an institution that is not required to take attendance would apply until the start of the next period during which attendance taking is required. Any increase in overall burden is mitigated since this requirement is tied to policies for taking attendance that are already in place at institutions, and uses the existing requirements for determining the amount of Federal funds a student earned based upon that information. Cases of noncompliance are addressed on a case by case basis when the occurrences are isolated, and institutions are expected to take appropriate corrective actions when an error is brought to their attention during a self-audit, a compliance audit, or a program review. Accordingly, the Department does not believe it is necessary to delay the implementation date of these regulations, or to reopen the issue for negotiation.

C , : None.

O j: A few commenters opposed the proposed changes, arguing that the proposed regulations exceed the Secretary's authority under the law. The commenters believed that Congress intentionally allowed institutions the option to use the midpoint of the payment period because it recognized that institutions have already incurred costs when a student fails to withdraw officially. A few commenters believed that the definition of last day of attendance under the statute is sufficient and that the Department should not make any changes to the regulations. Some commenters opposed the proposal that an "institution required to take attendance" includes an institution that takes attendance voluntarily, arguing that the wording of the statute, which states "institutions that are required to take attendance" and not "institutions that take attendance," indicates that Congress did not intend to include institutions that choose to take attendance in that category. Other commenters expressed strong support for the broadened definition.

D : Under the law, institutions that are required to take attendance must use that information to determine when students who do not complete a class stopped attending. It is common for the Department to view requirements established by an institution, such as an institutional refund policy, as being a requirement for that institution. The Secretary believes it is reasonable to interpret the law to include instances where the institution itself is establishing the requirement to take attendance for a program, a department, or the entire institution. The regulations do not include instances where a faculty member would monitor student attendance but was not required to do so by the institution. Furthermore, there is no reason that attendance information required by an institution would be different in substance from attendance information required by other entities. It is the process of taking attendance itself that leads to the information being available, regardless of whether it is required by the institution or an outside entity. The law provides that institutions that are required to take attendance must use that information for students who stop attending, and the regulations define the term "required to take attendance" to include instances where the institution itself is establishing that requirement for a program, a subpopulation of a program, a department, or the entire institution. The Secretary also believes that this information should be used when it is available, even if attendance is not required and is only taken for a limited period during the payment period or period of enrollment.

C , : None.

O j: A number of commenters requested clarification about whether an institution would be required to perform a Return of Title IV Funds calculation for students that were not in attendance on the last day of a limited census period. Specifically, a few commenters believed that § 668.22(b)(3)(iii)(B) could be interpreted in different ways. First, it could be read to mean that an institution must treat a student who is not in attendance on the last day of a limited period of attendance taking as a withdrawal, even if the student continued to attend classes or was engaged in another academically-related activity after the end of the limited period. Along these lines, a few commenters pointed out that it could be difficult for an institution to ascertain whether a student actually withdrew, or whether the student was in fact only absent for a class or two. Second, it could be read to mean that if an institution has attendance records during a limited period, the institution must use those attendance records, as the best available source of information, in determining a student's dTjdnahe best ory. Ot8tq ins167,from attendanc proe ioer of cSm4 reat if an instituT*in anwisuld be required to take attenement to take attendtary

is evidence that the student was academically engaged in the class at a point after the limited period when attendance was taken. Unless an institution demonstrates that a withdrawn student who is not in attendance at the end of the limited period of required attendance taking attended after the limited period, the student's withdrawal date would be determined according to the

D : We do not agree. An institution must act in accordance with § 668.164(g), which contains the requirements for making a late disbursement, including circumstances where a student did not have a valid SAR or valid ISIR on the student's last date of attendance.

C : None.

A A (668)

G (668.51)

C : One commenter questioned whether the Department would describe, in the final regulations, our plans to provide training to assist institutions to prepare for and comply with verification requirements reflected in subpart E of part 668.

D : The Department will issue guidance through the *A* and other training materials, as needed. The Department will also provide training through our regional training officers. For information on our current and future training activities and learning resources, institutions should visit the Training for Financial Aid Professionals Web site at *2.* /

D . . . : Under these final regulations, an institution must verify the items selected for verification before making any professional judgment adjustments regardless of whether an institution is making adjustments to the item being verified. Prior to the effective date for subpart E of part 668 of these final regulations, for an application selected for verification, an institution must verify the data elements identified in current § 668.56 before making any adjustments regardless of whether an institution is making adjustments to the item being verified.

C . . . : None.

C . . . : One commenter asked whether an institution must complete verification prior to exercising professional judgment if the applicant's FAFSA information is selected for verification by the institution, rather than by the Secretary.

D . . . : To ensure that any professional judgment adjustments made by an institution are based on accurate information, we believe that all FAFSA information selected for verification, whether selected by the Secretary or the institution, must be verified before the institution can exercise professional judgment. We are making a change to § 668.53(c) to make this clearer.

C . . . : We have revised § 668.53(c) by removing the phrase "by the Secretary" after the words "selected for verification" to provide that verification, regardless of whether the FAFSA information to be verified is selected by the Secretary or the institution, must be completed prior to exercising professional judgment.

. . . . A . A . . . (668.54)

C . . . : Many commenters supported our proposal to target verification to those items reported on the FAFSA that are most prone to error, based on a set of criteria that identifies which items are most likely to contain erroneous data, instead of requiring verification of all five items listed in current § 668.56 for FAFSAs selected for verification.

Another commenter agreed with proposed § 668.54(b)(1)(iii), which excludes from verification applicants who only receive unsubsidized student financial assistance. This commenter stated that this approach would be more efficient for applicants and free up time for institutional staff to help other applicants.

D . . . : The Department appreciates the commenters' support.

C . . . : None.

C . . . : Many commenters opposed removing the institutional option to limit the total number of applicants who must be verified to 30 percent of all applicants. They argued that removing this limitation, which is reflected in current § 668.54(a)(2)(ii), would increase the workload of FAAs already struggling with reductions in staff and in State budgets, with a multitude of regulatory changes, and with increased enrollments. Some commenters noted that the Department currently targets Pell-eligible applicants for verification and were concerned that community colleges would be unduly impacted if the 30 percent limitation were removed. Commenters stated that more institutions may need to use the 30 percent limit to manage their workload due to the large increase in applicants applying to institutions with open enrollment. Many commenters expressed concern that the Department would significantly increase the number of applicants whose FAFSAs are selected for verification if a limit is not established in the regulations.

One commenter noted that additional study of the current verification process is needed to determine which corrections provide the most meaningful improvements in program integrity.

A commenter recommended that we retain the 30 percent limit for at least two years, during which time we can monitor whether the proposed approach of targeting information to be verified,

applicants who are incarcerated at the time verification would occur and applicants who are immigrants who recently arrived in the United States should not be subject to verification. One commenter noted that verification in these cases would require institutions to spend a significant amount of time explaining the Federal requirements to these applicants when their eligibility for aid may not be affected by the data gathered to complete verification. Another commenter stated that a dependent applicant whose parents are deceased or are physically incapacitated should also be excluded from verification.

D : We do not agree with the commenters. Applicants who are incarcerated, recent immigrants to the United States, or whose parents are physically incapacitated, should be able to provide the documentation required to complete verification by providing their institution with the documentation that was used to complete the FAFSA.

An applicant whose parents are deceased would be independent and therefore there would be no verification of parental information on an independent student's FAFSA.

C : None.

C : Several commenters expressed concern that the new process for verifying different FAFSA items

commenters requested that there be no change in this area or that FAAs be permitted to make dependency status changes under certain circumstances, such as during verification, or at their discretion. For example, one commenter suggested requiring the reporting of a change to dependency status until the first disbursement of title IV, HEA aid has been made and that if the dependency status update results in a change in the applicant's EFC, the lower value should be used. A couple of commenters observed that students who married late in the award year would become independent and need to have their aid repackaged for the award year. One commenter opposed all mid-year dependency status changes because they undermine the "snapshot" approach to the application process and create a large administrative burden. Another commenter noted the potential for students who divorced and became dependent again to lose eligibility for the aid they received because their parents would refuse to provide information for the application. Still another remarked that it is hard for institutions to track dependency status during the award year because accurate tracking requires that students notify the institution of changes. One commenter, who stated that he appreciated that when an update is due to a change in the student's marital status, institutions would only be required to make the

FAFSA when a dependent student's

verification criteria, or adopt early the new criteria.

D . . . . . : While institutions will need to wait for the receipt of the ISIR before requesting specific verification documentation from applicants, we do not envision that this will substantially delay the time required for applicants to complete verification. During the early years of implementation of the targeted approach to verification, there will be stability in the FAFSA information the Secretary selects from year to year. For example, we would retain the five items included in the current regulations and supplement them as needed. However, it is unlikely that an applicant would have to verify all five data elements.

We will publish in the . . . . . the set of potential verification items the Department intends to verify for an upcoming award year four to six months prior to the start of the application processing year (January 1, 2012 for the 2012–13 award year) to give institutions time to modify their systems. The maximum number of items that could be selected for verification in any given year is the entire list of items we plan to publish in the . . . . . notice for that year. Because the selection of verification items for a particular award year will be based upon a sophisticated statistical analysis of prior year and other relevant data, we do not anticipate the . . . . . notice providing multi-year selection criteria, nor, for the same reason, do we intend to solicit public comments on the verification items we select.

To verify an applicant's FAFSA information that overlaps two processing years, the institution must determine which award year's EFC will be used and apply the verification criteria established for that award year.

C . . . . . : None.

C . . . . . : Various commenters expressed concern that the new approach for targeting items for verification will unfairly affect traditionally black, community, and career colleges. One commenter requested that we not use the verification process to target low-income demographic groups and that we consider some kind of relief for these groups regarding discrepancies in information under § 668.16(f). Another comtarget gosDTj-5.90.111 Td(cpvumographpqtical analys Td(to)TjT*(vrsp4we not usTj/Tant would)TjT*(sT*(vr Anothe)Tised and apa sT*(vr Anothe)Tised and apain the fivr-16a seleS 1 Tf(*(g57(a)(2 robe)]TJ-0ussion:)Tj: approach cT*(diTjc*t)

Because the applicant was employed, the applicant must be placed on the institution's own payroll account and all required employer contributions for social security, workers' compensation, or any other welfare or insurance program, must still be paid by the institution because this applicant was an employee.

In addition, the institution is allowed under § 668.58(a)(3) to employ a student under the FWS Program for the first 60

confused by the regulations. If students have questions about the regulations, they have a variety of sources to assist them in understanding them, including by contacting the Department with their questions.

We disagree with the commenters who opined that the proposed regulations are too vague and subjective. Section 487 of the HEA provides that institutions participating in the title IV, HEA programs shall not engage in substantial misrepresentation of the nature of the institution's educational program, its financial charges, or the employability of its graduates. The regulations in subpart F of part 668 set forth the types of activities that constitute misrepresentation by an institution and describe the actions that the Secretary may take if the Secretary determines that an institution has engaged in substantial misrepresentation. The proposed changes to the regulations strengthen the Department's regulatory enforcement authority against institutions that engage in substantial misrepresentation and clarify what constitutes misrepresentation.

The commenters who stated that the proposed regulations are unfair because they only apply to for-profit institutions are incorrect. Subpart F of part 668 applies to all institutions that participate in the title IV, HEA programs.

C , : None.

O i : Some commenters argued that the proposed regulations are legally deficient on their face, redundant, and provide no insight or guidance on conduct that may constitute "substantial misrepresentation." They stated that the proposed regulations do not contain any standards of intent, harm, or materiality. In addition, some commenters stated that the regulations are missing a quantitative element because they do not identify what exactly would trigger penalties (., a single complaint, a pattern of misrepresentation, a dollar amount of title IV, HEA aid). These commenters stated that a degree of materiality of misrepresentation should be taken into account when determining whether to impose a sanction on an institution.

D : We disagree with the commenters who opined that the Department does not have the legal authority to regulate in this area. Current subpart F of part 668 has been in place for over 25 years. The proposed changes strengthen the Department's regulatory enforcement authority over institutions that engage in substantial misrepresentation and further clarify what constitutes misrepresentation.

The U.S. Government Accountability Office (GAO) was recently asked to conduct undercover testing to determine whether for-profit colleges' representatives engaged in fraudulent, deceptive, or otherwise questionable marketing practices. The undercover tests at 15 for-profit institutions found that four institutions encouraged fraudulent practices and that all 15 made deceptive or otherwise questionable statements to GAO's undercover applicants. Institutional personnel engaged in deceptive practices, including by encouraging

misrepresentations under subpart F of part 668.

We understand that some commenters have concerns about baseless charges and frivolous lawsuits that may be brought by students and employees including by dissatisfied students and disgruntled employees as well as fears that "routine marketing claims" would lead to lawsuits. We do not believe that the proposed regulations will increase litigation by students and employees against the institution. These regulations do not provide an additional avenue for litigation for students, employees and other members of the public. Instead, the regulations specify the conditions under which the Department may determine that an institution has engaged in substantial misrepresentation and the enforcement actions that the Department may choose to pursue. As the Department does in evaluating any regulatory violation, in determining whether an institution has engaged in substantial misrepresentation and the appropriate enforcement action to take, the Department will consider the magnitude of the violation and whether there was a single, isolated occurrence.

C *:* None.

O *i:* Many commenters expressed concern that the proposed changes would eliminate due process protections for institutions in the case of substantial misrepresentation. The commenters requested that we retain the procedures from current § 668.75, arguing that the removal of these procedures conflicts with the HEA and exceeds the Department's statutory authority to regulate in this area.

Several commenters also expressed concern about the proposed removal of current § 668.75 because that section required the Department to review complaints and to dispose of them informally if the complaints were determined to be minor and could be readily corrected. The commenters argued that the proposed regulations would eliminate this sensible approach in exchange for using other procedures. These commenters recommended that we amend § 668.71(a) to include an option for the Department to allow an institution to correct minor, inadegubRulitionon, ins wilr so1 Tf11 0 0 6te thiriidures con:

C , : None.

O j : Some commenters expressed concern with the effect these proposed misrepresentation regulations could have on students. They argued that the regulations would conflict with State laws and create confusion in an area long regulated by the States. For example, given that students file complaints with the State, the commenters stated that an additional Federal remedy would be duplicative and would create uncertainty for students.

Other commenters expressed concern about institutions that require students to sign arbitration and confidentiality agreements as part of their enrollment contracts. These agreements serve to limit access to qualified legal counsel for students who may want to pursue a misrepresentation claim. Some commenters stated that the regulations should not be interpreted to create an express or implied private right of action against an institution for misrepresentation.

D , : We disagree with the commenters who stated that students will be confused by the misrepresentation regulations because they otherwise typically pursue claims of misrepresentation under State law. Nothing in the proposed regulations alters a student's ability to pursue claims of misrepresentation pursuant to State law and nothing in the proposed regulations creates a new Federal private right of action. The regulations are intended to make sure that institutions are on notice that the Department believes that misrepresentations constitute a serious violation of the institutions' fiduciary duty and that the Department will carefully and fairly evaluate claims of misrepresentation before determining an appropriate course of action.

C , : None.

(668.71)

O j : Many commenters expressed concern about the expansion of the misrepresentation regulations to cover false or misleading statements made by representatives of the institution or any ineligible institution, organization or person with whom the institution has an agreement. The commenters believed that this change will result in holding institutions accountable for what is said, may be said, or inadvertently is said, by individuals or organizations that may have no official connection to an institution, and that institutions cannot monitor inadvertent and unofficial comments. Commenters argued that the proposals would expose good institutions to sanctions based on actions beyond their control. Many commenters sought clarification about which representatives of the institution are covered by the regulations. For example, commenters pointed to statements that may be made by students through the use of social media. One commenter suggested we modify the definition of misrepresentation to clarify that institutions are responsible for statements made by representatives or entities compensated by the institution. Another commenter recommended that we include only individuals under the direct control of the institution, including spokespersons and enrollment management companies.

We received another suggestion to limit covered agreements to those relating to marketing or admissions. Many commenters expressed concern that, without this change, the proposed regulations would apply to the hundreds of contracts a large institution may have with various vendors and service providers. They suggested that the institution only be responsible for communications from and statements by individuals or entities authorized to speak for the institution or who have representative authority to respond to the subject in question.

Commenters were particularly concerned about the penalties that could result from misinformation provided by an entity other than the institution. The commenters argued that the institution should not be subjected to undue penalties if the institution took steps to monitor and mitigate such possible misrepresentations, and in fact, took action upon identifying any incidences. For example, institutions provide information to companies that compile college rankings that are often derided as inaccurate, incomplete or false. Commenters believed that any penalties should be limited to statements related to the relationship between the institution and the entity.

D , : As noted elsewhere in this preamble, the Department enforces its regulations, including those in subpart F of part 668 within a rule of reasonableness. We strongly believe that the concerns voiced by many commenters have ignored this fact. We do not expect, for example, to find actionable violations in the comments made by students and routine vendors. However, the Department acknowledges that the language in § 668.71 may be unnecessarily broad. For this reason, we agree to limit the reach of the ban on making substantial misrepresentations to statements made by any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services. We have done this by narrowing the language in § 668.71(b) and the definition of the term . As a result, statements made by students through social media outlets would not be covered by these misrepresentation regulations. Also, statements made by entities that have agreements with the institution to provide services, such as food service, other than educational programs, marketing, advertising, recruiting, or admissions services would not be covered by these misrepresentation regulations.

C , : We have revised § 668.71(b) and the definition of the term in § 668.71(c) to clarify that the ban on misrepresentations for which an institution is responsible only extends to false, erroneous, or misleading statements about the institution that are made by an ineligible institution, organization, or persons with whom the institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.

O j : Some commenters noted a need for the regulations to clearly differentiate between "misrepresentation" and "substantial misrepresentation." Other commenters questioned how we will determine what constitutes "substantial misrepresentation." These commenters asked what the standards are for determining what constitutes harm, materiality, or intent to misrepresent. Another commenter suggested that we revise the definition of to include misrepresentations that are disseminated—not only those that are "made".

D , : The Department is comfortable with its ability to make the distinction between a misrepresentation and a substantial misrepresentation. We believe that the regulatory definitions we are establishing are clear and can easily be used to evaluate alleged violations of the regulations. Moreover, as previously stated, we routinely evaluate the seriousness of title IV, HEA program violations before determining what, if any, action is appropriate. There is nothing in the proposed misrepresentation regulations that will alter the manner in which the Department reviews any violation of part 668, subpart F before deciding how it should respond.

C , : None.

institution to make a number of disclosures to students and to the extent that any of these disclosures are inaccurate and constitute substantial misrepresentation, they are actionable. The Department believes that the totality of its regulations provides a sufficient basis to protect against the making of substantial misrepresentations without creating another category of misrepresentations that are more logically covered within the context of disclosures.

In addition, we disagree with the commenter who argued that oral statements should not be included in the definition of the term . We have seen and heard clear and unambiguous examples of oral statements that we view as misrepresentations in the GAO's video of its undercover testing.

With respect to the commenters who expressed concern about how these regulations may affect an institution's ability to use the Internet for marketing purposes, we note that it should not matter where a misrepresentation takes place. What is important is to curb the practice of misleading students regarding an eligible institution, including about the nature of its educational program, its financial charges, or the employability of its graduates. We strongly believe that institutions should be able to find a way to comply with these regulations when using the Internet for marketing.

Finally, we understand the many complexities of domain name ownership, trademark infringement and the like and will ensure that we are targeting the correct entities in any enforcement action we take under these regulations.

C : None.

O : Several commenters objected to including testimonials and endorsements in the definition of misrepresentation, because doing so holds institutions responsible for unsolicited testimonials or endorsements of any kind. The commenters noted that testimonials are widely used as the most relevant form of marketing. One commenter suggested that we modify the regulations to refer to testimonials that the institution "requested" a student to make "as part of the student's program" as opposed to "required" the student to make "to participate in a program." Another commenter believed we should expand the definition of the term to include endorsements or testimonials for which students are given incentives or rewards.

D : The Department disagrees that changes to the definition of are needed. First, with respect to the commenters who stated that the definition is too broad, we note that the thrust of the definition is that the statement must be false, erroneous, or misleading. The inclusion within the definition of certain student endorsements or testimonials (. ., those that are given under duress or are required for participation in a program) establishes the circumstances under which endorsements or testimonials are necessarily considered to be false, erroneous, or misleading. We believe that including these types of endorsements and testimonials in the definition of misrepresentation is appropriate because endorsements or testimonials provided under these circumstances are suspect, at best.

Second, we do not believe it is necessary to expand the definition of misrepresentation to include endorsements or testimonials for which students are given incentives or rewards. We do not believe that an endorsement or testimonial for which a student was given a token reward such as a mug or t-shirt should automatically be considered false, erroneous, or misleading.

C : None.

(668.72)

O : One commenter supported the proposed changes to § 668.72 stating that the changes will reduce the motivation for institutions to use aggressive and misleading recruitment tactics to increase enrollment. The commenter noted that the requirements in this section align with their association's principles of good practice under which members represent and promote their schools, institutions or services by providing precise information about their academic major and degree programs.

D : The Department appreciates this support.

C : None.

O : One commenter stated that § 668.72 was inherently unclear and asked for additional clarification without providing any specifics.

D : The Department disagrees with this commenter and believes that the language in this section is clear. Moreover, because only n of misre.156 do orement mustob Tf-ditn: .loo-sinstitutions the defy.Ts.Ts.11g6 d titutions the defy.Ts.Ts.11g6 d (mia)Tjof rm institutions or sey.T(MoremTjTtfent. w)TjT*recruitment .11witr.

in that job and whether successful completion of the program will qualify them for such a job. Another commenter stated that an institution should know State licensing requirements in all the States in which it is providing the program and further opined that if the institution does not know the requirements, it could limit enrollment to students residing in the States in which it does know.

D : The Department agrees with the commenters who believe institutions should be responsible for making statements that are not false, erroneous, or misleading in States in which the institution's educational programs are offered and not only in the State where the institution is located.

C :

Department monitor the application of this ATB option.

D , • : We appreciate the support for these changes. With regard to the suggestion that the Department monitor the use of this eligibility option, we plan in 2011–2012 to implement a variety of changes to the data that institutions will provide to the Department that will help us determine when title IV, HEA program assistance is awarded to students who establish their title IV, HEA eligibility on the basis of either successfully completing six credit hours (or its equivalent) that are applicable toward a degree or certificate program offered at that institution, or when the student successfully passes an approved ATB test. We believe that this data will help us better understand the frequency that these options are employed and can lead to further study on the effectiveness of these alternatives to a high school diploma or its recognized equivalent.

C , : None.

O i : Some commenters offered conditional support for the regulatory change reflected in § 668.32(e)(5), but expressed some concerns. For example, one commenter expressed disagreement about the equivalency of six credit hours to six semester, six trimester, six quarter hours or 225 clock hours. In addition, several commenters did not agree with the application of 225 clock hours stating that this approach would not benefit students at clock hour institutions. Finally, a few commenters suggested that a conversion rate of 6 credit hours to 180 clock hours would be more reasonable.

D , • : As discussed during the negotiated rulemaking sessions and in the preamble to the NPRM, the statute is silent on equivalency. The Department believes that it is a reasonable interpretation to use the successful completion of 6 semester, 6 trimester, 6 quarter or 225 clock hours for purposes of equivalency because these all would be equal to completion of one quarter of an academic year. For this reason, we are adopting as final the changes we proposed in § 668.32(e).

C , : None.

O i : A few commenters asked about the transferability of the successful completion of six credits (or its equivalent) among title IV, HEA eligible institutions. One commenter expressed concern that it appeared that the courses where the six credits were initially earned could not be college preparatory coursework, because they are not applicable to an eligible program. Therefore, the commenter argued, § 668.32(e)(5) would not benefit those students for whom ATB would be most helpful, students who may need preparatory coursework.

D , • : Section 484(d)(4) of the

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§ 668.32(e)(5) would cause greater financial hardship for students because it would require students to pay for these six credits without the benefit of title IV, HEA program assistance and that this, in turn, may lead to some students turning to high cost private financing. One commenter expressed disappointment that the Department did not seize the opportunity to fully re-evaluate the ATB regulations and make more broad and sweeping changes to the standards. Finally, some commenters expressed concern that § 668.32(e)(5) may penalize students who are very able to successfully perform class work and

i i i i be expanded to include test proctors.

D : Section 668.142, in pertinent part, defines an i i i i as a test administrator who administers tests at a location other than an assessment center and who has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering approved ATB tests through an agreement with the test publisher or State, and has no controlling interest in any other institution and has no controlling interest in any other institution. We agree that independent test administrators may obtain a fee for the administration of ATB tests generally through a written contract between the test publisher or State and the test administrator. In order to clarify this single type of allowable financial interest, we have made a change to the language in this definition.

On the matter of expanding the definition of the term i i i i to include test proctors, we disagree with this suggestion. The reason we disagree with the commenter's suggestion is that subpart J of part 668 specifically restricts the administration of ATB tests to test administrators certified by the test publisher or State to administer their tests, as defined in the agreement between the Secretary and the test publisher or State, as applicable. We believe it would be confusing to add test proctors to the definition of a test administrator because only certified test administrators can administer ATB tests for title IV, HEA program purposes. We believe certification is an appropriate requirement because it insures that the approved tests are administered by trained, skilled, and knowledgeable professions.

C : We have amended the definition of the term i i i i by clarifying that an independent test administrator must have no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned through the agreement an independent test administrator has with the test publisher or State to administer the test.

A . A (668.144)

C i : One commenter strongly supported the proposed change in the language regarding the norming group in §§ 668.144(c)(11)(iv)(B) and 668.146(c)(4)(ii) that requires the group to be a contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States.

D : The statute provides that a student who does not have a high school diploma or its equivalent can become eligible for title IV, HEA program assistance if the student takes an independently administered examination and achieves the score specified by the Secretary that demonstrates that the student has the ability to benefit from the training being offered. As an alternative to obtaining a high school diploma, it is appropriate that the normative group used to establish the relative placement of the test-taker's results should be comprised of U.S. high school graduates rather than a group of persons who are beyond the usual age of compulsory school attendance in the United States. However, we take this opportunity to remind institutions that a fundamental component of the definition of the term i i i requires that an eligible and participating institution may admit as regular students only persons who have a high school diploma (or have the recognized equivalent) or are beyond the age of compulsory school attendance. Therefore, it is clear that for the purpose of establishing title IV, HEA program eligibility, approved ATB tests may only be provided to students who are beyond the age of compulsory school attendance.

C : None.

C i : Several commenters supported the proposal to include in the test publisher's or State's screening of potential test administrators, their evaluation of a test administrator's integrity. In response to our request in the NPRM for feedback about how a test publisher or a State will determine—in accordance with §§ 668.144(c)(16)(i) and 668.144(d)(7)(i)—that a test administrator has the integrity necessary to administer tests, we received a number of suggestions. These included the following—

- Requiring a prospective test administrator to sign, under penalty of perjury, an application indicating whether he or she had ever been convicted of fraud, breach of fiduciary responsibilities, or other illegal conduct involving title IV, HEA programs;
- Including a question on the test administrator's application asking whether the applicant has ever been convicted of a crime and, if the answer to this question is "yes", requiring the applicant to provide additional details;
- Including a question on the test administer application asking whether the applicant has ever worked at an institution of higher education, and if the answer to this question is "yes", requiring the applicant to provide additional details; and
- Requiring test publishers and States to perform fingerprinting and background checks, including a check for being included in any lawsuit, as well as, checking for arrests and convictions, for each test administer.

D : We appreciate the commenters' suggestions regarding ways test publishers and States can evaluate whether a test administrator has the integrity necessary to administer ATB tests. While test publishers and States can adopt any of the methods proposed by the commenters, we do not believe it is appropriate to require all test publishers and States to use those methods to evaluate test administrator integrity. Rather, we believe § 668.144, as proposed, will provide test publishers and States with the flexibility they need to determine that the test administrator will have the necessary training, knowledge, skills and integrity to test students in accordance with subpart J of part 668 and the requirements of the test administration technical manual. Under § 668.144, test publishers and States are required to disclose how they will go about making these determinations. When evaluating the information provided by test publishers and States, we will be looking at their processes and to what extent information collected by the test publisher or State supports their determination of whether a prospective test administrator can demonstrate his or her training, knowledge, skills and integrity. In addition, we will compare the requirements in the test administration technical manual to the other provisions in § 668.144 that require test administrators to have both the ability and facilities to keep the ATB tests secure against disclosure or release and how those issues are explained to prospective test administrators, how any monitoring may be achieved to insure that the tests are being protected.

C : None.

C i : One commenter recommended that test publishers and States should not be required to disclose any proprietary information, such as test anomaly analysis, to the Department due to the proprietary nature of the study techniques. The commenter stated that, if the Department decides that test publishers and States must provide their test anomaly study procedures, the Department should provide assurances that the information will be kept confidential.

D : It is important that test publishers and States provide the

test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the Standards for Educational and Psychological Testing").

D . : As discussed in the 1999 edition of the Standards, each standard should be considered to determine its applicability to the test being constructed. There may be reasons why a particular standard cannot be adopted; for example, if the test in question is relatively new, it may not be possible to have sufficient data for a complete analysis. As a result of the information in the 1999 edition of the Standards, we have made a change to the proposed language in § 668.146(b)(6) to reflect that tests must meet all applicable standards. However, we do not believe that we should include all "feasible" standards in the regulatory language. We believe that where a standard is not feasible, it would also not be applicable, as provided in the example, thus the inclusion of the word "feasible" is duplicative.

C . : We have revised § 668.146(b)(6) by eliminating outdated references to primary, secondary and conditional standards to make the provision consistent with the language used in the most recent edition of the Standards.

A . . . A . . (668.148)

C . : One commenter indicated that their program of instruction is taught in Spanish to non-English speakers with an English as a Second Language (ESL) component. The commenter asked the Department for guidance for populations where there is no approved ATB test in the native language of the students.

D . : Under § 668.148, if a program is taught in a foreign language, a test in that foreign language would need to satisfy the conditions for approval under §§ 668.146 and 668.148. Absent an approved ATB test, students without a high school diploma or its equivalent could meet the alternative under proposed § 668.32(e)(5), whereby a student has been determined to have the ability to benefit from the education or training offered by the institution based upon the satisfactory completion of 6 semester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by that institution where the hours were earned. If no test is reasonably available for students whose native language is not English and who are not fluent in English, institutions will no longer be able to use any test that has not been previously rejected for approval by the Secretary. We proposed this regulatory change because we recognized that, in the last 15 years, no ATB test in a foreign language has been submitted for approval. Therefore, under the current ATB regulations, any test in a foreign language became an approved ATB test regardless of whether it measured basic verbal and quantitative skills and general learned abilities, whether the passing scores related to the passing scores of other recent high school graduates, or whether these tests were developed in accordance with the APA standards. We believe that the removal of this overly broad exception from the current regulations will improve compliance and works in concert with the change reflected in § 668.32(e)(5), which allows for an exception where ability to benefit can be measured against a standard (the successful earning of six credits toward a degree or certificate program at that institution).

C . : None.

A . . . B. . . . . (668.150)

C . : Under proposed § 668.150(b)(3)(ii), the agreement between the Secretary and a test publisher or a State requires that certified test administrators have the ability and facilities to keep ATB tests secure. One commenter stated that it does not favor storage of ATB tests anywhere other than at the institution. Another commenter offered to work with the Department and other test publishers to develop guidelines that will improve ATB test security.

D . : While ATB tests can be used for more than title IV, student eligibility determination purposes (such as for other assessment purposes), institutions, assessment center staff, as well as, independent test administrators will continue to have access to these tests. Given this reality, we acknowledge that securing tests and preventing test disclosure or release is difficult. We established the requirement in § 668.150(b)(3)(ii) in order to balance the need for legitimate access and security. We appreciate the commenter's offer to work with the Department and other test publishers to develop guidelines to improve test security.

C . : None.

C . : One commenter supported the requirement in proposed § 668.150(b)(3)(iii) that only allows test administrators to be certified when they have not been decertified within the last

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administrator's certification or to decertify the test administrator. The notification requirement reflected in § 668.150(b)(6) only applies immediately after a test administrator is decertified—not during the suspension period. Notification of the Secretary or others of a test administrator's suspended status is voluntary, but is an action that the Department supports.

The commenter suggested that this notification requirement be waived after a certain appropriate period of time. We do not agree. Consistent with the provisions of §§ 682.402(e) and 685.212(e), students may have their loan debt obligations discharged under a false certification discharge if the school certified the student's eligibility for a FFEL or a William D. Ford Federal Direct Loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements of subpart J of part 668. Because these loans generally have a 10-year repayment schedule (and may have repayment plans under which repayment schedules can be extended to 25 or more years), we do not agree to limit the requirement to notify to the Secretary and institutions.

C , : None.

O i : One commenter strongly supported proposed § 668.150(b)(7), which requires that all test results administered by a test administrator who the test publisher or State decertifies be reviewed and that a determination be made about which tests were improperly administered. Upon a determination of which tests had been improperly administered, the test publisher or State must then immediately notify the affected institutions, affected students and affected prospective students. This commenter suggested that we revise this provision to require that the test publisher or State notify all students tested by the decertified test administrator.

Another commenter suggested that we add a time limit to § 668.150(b)(7)(i) so that test publishers and States that decertify a test administrator are only required to review tests administered by the decertified administrator during a specified period of time.

D ! : Under proposed § 668.150(b)(7)(ii), when a determination of improper test administration is made, the test publisher or State must provide notification to all affected institutions and students or prospective students. Under § 668.150(b)(7)(iii), the test publisher or State must also provide a report to the Secretary on the results of the review of the decertified test administrator's previously administered tests that may have been improperly administered. When a determination is made that tests were improperly administered, the affected entities would include institutions, students, and prospective students affected by those tests that were improperly administered. Under § 668.150(b)(7), notifications to those affected entities are required. We believe that these notification and reporting requirements are adequate to inform all affected parties, including students and prospective students. We do not believe it is necessary to notify a student who took a test administered by a test administrator who was subsequently decertified when there is no evidence that the particular test the student took was improperly administered.

Under proposed § 668.150(b)(7), if a test administrator was certified over a long number of years, test publishers and States potentially would be required to review many years' worth of previously administered ATB tests because, as proposed, this regulatory requirement included no limit on how far back test publishers and States would need to go when reviewing tests previously administered by a decertified test administrator. We believe that the burden on test publishers and States associated with such an extensive review should be balanced against the significant student loan debt that students tested by the decertified test administrator may have incurred. For this reason, we are modifying the language in proposed § 668.150(b)(7)(i) to limit the period of the review to the five-year period prior the date of decertification. We believe that a five-year period is reasonable for the following reasons. First, we are decreasing the period of time for test publishers and States to conduct their test data anomaly studies from 3 years to 18 months. These studies, which are designed, in part, to analyze if there are ATB test irregularities, will be conducted more frequently and can be used to identify possible instances of improper test administration. Second, we believe that a longer review period will increase the likelihood that the student notification efforts of test publishers and States (in the event that their review reveals that previously administered tests were improperly administered) will be ineffective, in part, due to the low probability that the student address information that a test publisher or State obtains when the student takes the test will remain accurate over this period of the review. Finally, we strongly recommend that test publishers and States consider additional disclosures to students asking that they update their address information with test publishers and States over time, in order for test publishers and States to provide students and prospective students with potential future notifications that could reduce their future title IV, student loan indebtedness.

C , : We have revised § 668.150(b)(7)(i) to indicate that the period of the review of all the test results of the tests administered by a decertified test administrator is 5 years preceding the date of decertification.

O i : One commenter, who expressed support for the proposed change reflected in § 668.150(b)(13) decreasing the timeframe from 3 years to 18 months for test publishers and States to analyze ATB test scores to determine whether the test scores and data produce any irregular patterns, suggested that that the Department also consider a separate metric for test administrators who administer large numbers of ATB test within an 18 month period.

D : We appreciate the recommendation and acknowledge that test publishers and States are free to adopt such a suggestion for test administrators who are providing large numbers of ATB test administrations in a short period of time. As some test publishers have pointed out, test publishers have everything to gain from ensuring that their ATB tests are properly administered in accordance with the regulations and their test administration manual. To the extent that there are high volume test administrators, test publishers and States can best protect their tests by developing processes to help them to determine early whether these high volume test administrators are in compliance.

C , : None.

O i : One commenter suggested that the Department consider a modification to the language in § 668.150(b)(13) to change the emphasis from an analysis of the test scores to an analysis of the test data.

D : The purpose of proposed § 668.150(b)(13) (in concert with proposed §§ 668.144(c)(17) and (d)(8), which require test publishers and States, as applicable, to explain their methodology for identifying test irregularities) is to require test publishers and States to collect and analyze test data, to determine whether the test scores and data produce any irregular patterns that raise an inference that the tests were not being properly administered, and to provide the

Secretary with a copy of the test anomaly analysis. We acknowledge that this type of analysis is broader than just examining the test outcomes, . . . the test scores. Because this type of item analysis, which can yield statistical irregularities, goes beyond test score results, we have modified the proposed language accordingly.

C , , : We have modified § 668.150(b)(13) so that it refers to "test data of students who take the test" and not to "test scores of students who take the test" to determine whether the test data (rather than "the test scores and data") produce any irregular pattern that raises an inference that the tests were not being properly administered.

C i : One commenter suggested that the Department modify proposed § 668.150(b)(14) to require that any request for information by the Secretary or other listed agencies and entities be in writing.

D , , : Nothing in the regulations would prevent the test publisher or State from asking the entities listed in § 668.150(b)(14) to request the information in writing, and from implementing other safeguards to protect the security and confidentiality of the data.

C , , : None.

C i : One commenter stated that § 668.150(b)(16), as proposed, is ambiguous. The commenter suggested that we delete the word "other," as it modifies "criminal misconduct," from this section.

D , , : Upon further review, we have determined that alternative language that specifically provides for both civil and criminal fraud would clarify what we mean in this regulatory provision. The purpose of § 668.150(b)(16) is to require test publishers and States to immediately report any credible information indicating that a test administrator or institution may have engaged in fraud or other criminal misconduct. We intend for test publishers and States to report suspected fraud or misconduct without requiring them to ascertain whether the conduct constitutes civil fraud, criminal fraud or "other criminal misconduct."

C , , : We have revised § 668.150(b)(16) to require that the agreement between a test publisher or a State, as applicable, and the Secretary must provide that the test publisher or the State, as applicable, must immediately contact the Office of the Inspector General of the Department of Education if the test publisher or the State finds any credible information indicating that a test administrator or institution has engaged in civil or criminal fraud or other misconduct.

C i : One commenter expressed general support for proposed § 668.150(b)(17), which requires test administrators who provide an ATB test to an individual with a disability who requires an accommodation, to report to the test publisher or State both the disability and the accommodation. However, the commenter recommendTw 1 -1.022 Td(of tgto report to b)(*(disability and the ac

[1] The use of the term "temporary impairments" for the purposes of these regulations should not be confused with the definition of disability as defined by these regulations (see § 668.142), section 504 of the Rehabilitation Act, or the Americans with Disabilities Act.

C , : None.

A (668.151)

C : One commenter provided a number of suggestions regarding test administration security, including requiring that (1) test publishers contact the Department when tests are being used for ATB and non-ATB purposes, (2) different versions of the test be used for different purposes so that one version is used exclusively for ATB purposes, (3) ATB tests only be shipped to test administrators and not to institutions, and (4) ATB tests be locked in an area that cannot be accessed by non-certified test administrators.

D : Many ATB tests that have been submitted to the Secretary and subsequently approved for title IV, HEA student eligibility purposes are also used for general academic placement purposes not related to ATB. Regarding the suggestion that test administrators report to the Department when a test is used for ATB purposes, beginning with the 2011–2012 award year, we will begin collecting information on the use of an ATB test for each student who receives title IV, HEA funds; therefore test administrators will not have to provide the information to us. In terms of requiring that approved ATB tests must be used exclusively for this single purpose, that would require a statutory change. While it has been suggested that we revise the regulations to allow ATB tests only be shipped to test administrators and not to institutions, we believe that this is not feasible given that ATB tests are used both for title IV, HEA eligibility and non-title IV purposes, such as for course placement purposes. Finally, while it may be possible that at the discretion of the institution's assessment center (or as a result of an agreement between the test publisher or State and the institution) that ATB tests be locked in an area only accessible by certified test administrators, this may be impractical since these tests are used for non-title IV eligibility purposes.

C , : None.

C : A commenter indicated that for computer-based tests, institutions maintain the associated system components on their computers, so test administrators (particularly independent test administrators) cannot be held responsible for maintaining the security of these types of tests, other than during the test administration.

For paper-and-pencil tests, the commenter expressed strong concerns regarding independent test administrators being held responsible for storing test materials. The commenter stated that independent test administrators often do not have access to secure storage, other than at the campuses where they administer the test. Use of their home or automobile for storage and transportation to test sites is clearly unacceptable for security. Institutions typically have a secure location (a locked facility to which only the test administrator and possibly a select few individuals have a key) where materials can be stored. In addition, many institutions use the same test forms for ATB purposes and other purposes, and thus would already have copies of the test forms in storage at the institution. The commenter argued that maintaining test forms at the institution while emphasizing the chain of custody, under written agreements, will better contribute to the goal of keeping test forms secure.

D : We disagree. Proposed § 668.144(c)(16) and (d)(7) require test publishers and States, respectively, to ensure not only that the test administrator has the training, knowledge, skill and integrity to test students in accordance with the requirements of this subpart, and the requirements of the test administration technical manual, but also, that the test administrator has the ability and facilities to keep the ATB tests secure against disclosure or release. We believe that these requirements are reasonable, and prudent, and will help ensure the integrity of ATB tests. While at this time, we are not prescribing how test publishers or States must make these determinations about their test administrators, we expect that they will base their determinations on the measures taken by the test administrator to protect the security of the tests. For example, one could envision a test administrator satisfying this requirement by having a secure safe in the assessment center where only certified test administrators had the key or combination to obtain the tests. In the case of an independent test administrator, one could envision the test administrator satisfying the requirement by maintaining the tests in a mobile, portable safe or some other secure device. As these examples illustrate, test publishers and States will be required to distinguish between secure and non-secure methods of storing ATB tests that limit access and protect against unintended release or disclosure if these tests are going to continue to be used for ATB purposes, otherwise the Secretary will consider that the test is improperly administered.

C , : None.

A (668.153)

C : One commenter noted that if a non-English speaking student is in a program of study which is taught in the student's native language and the program also has an ESL component or that at least a portion of the program will be taught in English, there are two aspects that need to be tested, the student's reading, verbal and quantitative skills in their own native language, as well as, their knowledge of English in order to understand the portion of the program taught in English. The commenter expressed concern regarding the timing of these tests.

D : We appreciate this

Concerning the request for a delay in implementing these regulations, we believe that an institution has ample time to make any administrative and software changes required since the regulations are not effective until the 2011–2012 award year.

C , : None.

O i : Some commenters questioned whether the anticipated credit balance for a student under the proposed regulations is calculated based only on Federal Pell Grant funds; all title IV, HEA program funds; or all financial aid funds.

In determining whether an institution could disburse title IV, HEA program funds to an eligible student 10 days before the beginning of a payment period, several commenters requested the Department to clarify how an institution treats a student who (1) Is selected for verification, (2) is subject to the 30 day delayed disbursement provisions for first-time, first-year undergraduate borrowers, (3) is attending a term-based program with minisessions, (4) has a "C" code on the SAR or ISIR, or (5) has other unresolved eligibility issues.

Some commenters requested that the regulations provide that an institution is only required to provide a student with the funds or bookstore vouchers for books and supplies after the student has attended at least one day of class.

One commenter noted that under Federal law a bank must have a customer identification program to help the government fight the funding of terrorism. Under that program, a bank must verify the identity of any person who opens an account and have procedures in place to resolve conflicting identity data. The commenter was concerned that for institutions using bank-issued stored-value cards or prepaid debit cards to deliver funds for books and supplies, any delays by the bank in resolving the conflicts would delay the delivery of funds to students. Consequently, the commenter requested that the regulations allow for this type of delay.

One commenter asked how the proposed regulations would apply under a consortium agreement between two eligible institutions if the student is enrolled in a course at the host institution with the class starting prior to the payment period at the home institution and the home institution is processing and paying the title IV, HEA program assistance. Another commenter asked what action would be required by an institution if it includes books and supplies in the tuition and provides all of those materials to the student when tudsat22 TWd

In addition, an institution must return any Direct Loan funds that were credited to the student's account at the institution for the payment period or period of enrollment. For any Direct Loan funds disbursed directly to a student, the institution must notify the Department of the loan funds that are outstanding, so that the Department can issue a 30-day demand letter to the student under 34 CFR 685.211. If the institution knew prior to disbursing any of the Direct Loan funds directly to the student that he or she would not begin attendance, the institution must also return those Direct Loan funds. This would apply when, for example, a student had previously notified the institution that he or she would not be attending or the institution had expelled the student before disbursing the Direct Loan directly to the student.

When an institution is responsible for returning title IV, HEA program funds for a student who failed to begin attendance at the institution it must return those funds as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. The funds that are required to be returned by the institution are not a student title IV, HEA liability and will not affect the student's title IV, HEA eligibility. However, institutional charges not paid by financial assistance are a student liability owed to the institution and subject to its own collection process.

The new requirement also does not change the regulations in 34 CFR 668.22 on handling the Return of Title IV Aid when a student began attendance but withdraws from the payment period or period of enrollment. If the institution provides a bookstore voucher for a student to obtain or purchase books and supplies, those expenses for the required course materials are considered institutional charges because the student does not have a real and reasonable opportunity to purchase the materials from any other place except the institution. The institution must include the charges for books and supplies from a bookstore voucher as institutional charges in determining the portion of unearned title IV, HEA program assistance that the institution is responsible for returning. However, an institution does not have to select the bookstore voucher as the way to meet the new requirement, it is just one option.

C , : None.

O i : One commenter opined that students who are not Pell Grant eligible would be unfairly responsible for obtaining funds to purchase books while others at the same institution would be confused about who should or should not receive the means to obtain or purchase books and supplies at the beginning of the term or enrollment period. A few commenters suggested or asked whether a student could opt out of the way offered by an institution to obtain or purchase books and supplies.

Some commenters asked if the proposed regulations were in conflict with the current Cash Management regulations in §§ 668.164 and 668.165. A few commenters requested clarification on how student authorizations applied to the new requirements. Some commenters suggested that an institution should not be required to obtain a student's authorization to credit his or her account at the institution with title IV, HEA program funds for books and supplies, while other commenters recommended that an institution should be able to require the student's authorization before advancing funds for books and supplies.

D , : Under § 668.16(h), an institution is required to provide adequate financial aid counseling to eligible students who apply for title IV, HEA program assistance and under § 668.42, an institution is required to provide consumer information to enrolled and prospective students that, among other things, describe the method by which aid is determined and disbursed, delivered, or applied to a student's account and the frequency of those disbursements. Further under § 668.165(a)(1), before an institution disburses title IV, HEA funds it must notify a student how and when those funds will be disbursed. Based on these requirements, an institution must describe in its financial aid information and its notifications provided to students receiving title IV, HEA funds the way under § 668.164(i) that it provides for Federal Pell Grant eligible students to obtain or purchase required books and supplies by the seventh day of a payment period under certain conditions. The information must indicate whether the institution would enter a charge on the student's account at the institution for books and supplies or pay funds to the student directly. Institutions also routinely counsel students about the variations in the amounts of Federal student aid or other resources that are available to them based upon their need and expected family contribution. We believe that this counseling process will mitigate any confusion by explaining to a student who qualifies for funds advanced to purchase books and supplies, how the process is handled at the institution, and how a student may opt-out of the process.

Regardless of the way an institution provides for a student to obtain books and supplies, the student may opt out. For instance, if an institution provides a bookstore voucher, the student may opt out by not using the voucher. If the institution uses another way, such as a bank-issued stored-value or prepaid debit card, it must have a policy under which the student may opt out. For example, a student might have to notify the institution by a certain date so that the institution does not unnecessarily issue a check to the student or transfer funds to the student's bank account. In any case, if the student opts out, the institution may, but is not required to, offer the student another way to purchase books and supplies so long as it does not otherwise delay providing funds to the student as a credit balance. We are amending the regulations to clarify that a student may opt out of the way that an institution provides for a student to obtain books and supplies.

In addition, to facilitate advancing funds or credit by the seventh day of classes of a payment period under this provision, the Department considers that a student authorizes the use of title IV, HEA funds at the time the student uses the method provided by the institution to purchase books and supplies. This means that an institution does not need to obtain a written authorization under §§ 668.164(d)(1)(iv) and 668.165(b) from the student to credit a student's account at the institution for the books and supplies that may be provided only under § 668.164(i). We are amending the regulations to indicate that an institution does not need to obtain a written authorization from a student to credit the student's account at the institution for books and supplies provided under § 668.164(i).

C , : Section 668.164(i) has been revised to specify that an institution must have a policy under which a Federal Pell Grant eligible student may opt out of the way the institution provides for the student to purchase books and supplies by the seventh day of classes of a payment period. In addition, § 668.164(i) has been revised to specify that if the Federal Pell Grant eligible student uses the method provided by the institution to purchase books and supplies, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under §§ 668.164(d)(1)(iv) and 668.165(b) for this purpose only.

, A , (685.102( ), 685.301( ), 686.2( ), 686.37( ))

C i : A few commenters supported the proposed regulations to adopt the Federal Pell Grant reporting requirements for the TEACH Grant and Direct Loan programs and to add the Federal Pell Grant definition of the term *P i D i* to the two other programs.

D : We believe that harmonizing the reporting requirements

67,212 hours in OMB Control Number 1845–NEW1.

We estimate that annually there will be 3,499,998 students who will begin attendance in occupational programs that train students for gainful employment in a recognized occupation. We estimate that 1,996,593 of the 3,499,998 students will attend a proprietary institution. Therefore, with regard to proprietary institutions, the total number of affected students is estimated to be 5,989,779 students (1,996,593 times 3) for the initial reporting period that will cover the 2006–2007 award year, the 2007–2008 award year and the 2008–2009 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, and the CIP codes for each beginning student (. ., a student who during the award year began attending a program under § 668.8(c)(3) or (d))

and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 26,033 hours of increased burden for the 2009–2010 award year.

We estimate that 33,627 of the 567,334 students will complete their program at a private not-for-profit institution. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 2,690 hours of increased burden during the 2009–2010 award year.

We estimate that 208,291 of the 567,334 students will complete their program at a public institution during the 2009–2010 award year. We estimate that the reporting of student identifier information, the location of the institution the student attended, the CIP codes for each graduate, the date of completion, the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution after completing the program, and whether the student matriculated to a higher credentialed program at the same or another institution will average .08 hours (5 minutes) per student or 16,663 hours of increased burden for the 2009–2010 award year.

Collectively, we estimate that burden for institutions to meet these reporting requirements for students who begin attendance or complete their occupational programs that train students for gainful employment in a recognians that the student owes the institution after completing the

Section 668.8(k)(1)(ii) will modify a provision in current regulations to provide that a program is not subject to the conversion formula in § 668.8(l) where each course within the program is acceptable for full credit toward a degree that is offered by the institution and that this degree requires at least two academic years of study. Additionally, under § 668.8(k)(1)(ii), the institution will be required to demonstrate that students enroll in, and graduate from, the degree program.

Section 668.8(k)(2)(i) will provide that a program is considered to be a clock-hour program if the program must be measured in clock hours to receive Federal or State approval or licensure, or if completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student

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per affected individual which will increase burden for the estimated 425,075 students by 318,806 hours in OMB Control Number 1845–0022. Of these 425,075 withdrawals, we estimate that 50 percent of the withdrawals (212,538) will occur at proprietary institutions and will increase burden by 1 hour per withdrawal increasing burden by 212,538 hours. We estimate that 10 percent of the withdrawals (42,508) will occur at private non-profit institutions and will increase burden by 1 hour per withdrawal increasing burden by 42,508 hours. We estimate that 40 percent of the withdrawals (170,029) will occur at public institutions and will increase burden by 1 hour per withdrawal increasing burden by 170,029 hours. Collectively, we estimate that burden will increase by 743,881 hours in OMB Control Number 1845–0022, of which 318,806 hours is for individuals and 425,075 hours is for institutions.

668.34

The final regulations restructure the satisfactory academic progress requirements. Section 668.16(e) (Standards of administrative capability) has been revised to include only the requirement that an institution establish, publish and apply satisfactory academic progress standards that meet the requirements of § 668.34. The remainder of current § 668.16(e) has been moved to § 668.34 such that it, alone, describes all of the required elements of a satisfactory academic progress policy, as well as how an institution will implement such a policy. The references in § 668.32(e) have been updated to conform the section with the final changes we have made to §§ 668.16(e) and 668.32.

Section 668.34(a) specifies the elements an institution's satisfactory academic policy must contain to be considered a reasonable policy. Under these regulations, institutions will continue to have flexibility in establishing their own policies; institutions that choose to measure satisfactory academic progress more frequently than at the minimum required intervals will have additional flexibility (see § 668.34(a)(3)).

All of the policy elements in the current regulations under §§ 668.16(e) and 668.34 are combined in § 668.34. In addition, § 668.34(a)(5) makes explicit the requirement that institutions specify the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, and provide for measurement of a student's pace at each evaluation. Under § 668.34(a)(6), institutional policies will need to describe how a student's GPA and pace of completion are affected by transfers of credit from other institutions. This provision will also require institutions

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already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 326 hours.

We estimate that 1,593 (or 92 percent of all 1,731 private non-profit institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of private non-profit institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to private non-profit institutions by 271 hours.

We estimate that 1,740 (or 92 percent of all 1,892 public institutions) will have to begin providing contact information for filing complaints with accreditors, approval or licensing agencies. We estimate that the other 8 percent of public institutions are already providing this information. We estimate that on average, this disclosure will take .17 hours (10 minutes) per disclosure and that it will, therefore, increase burden to proprietary institutions by 296 hours.

Collectively, we estimate that burden will increase for institutions in their reporting of the contact information for filing complaints to accreditors and approval or licensing agencies by 893 hours in OMB Control Number 1845–0022.

In total, the final regulatory changes reflected in § 668.43 will increase burden by 67,870 hours in OMB Control Number 1845–0022.

, . 668.55 . , I .

Section 668.55 will require an applicant to update all applicable changes in dependency status that occur throughout the award year, including changes in the applicant's household size and the number of those household members attending postsecondary educational institutions. We estimate that 1,530,000 individuals will update their household size or the number of household members attending postsecondary educational institutions and that, on average, reporting will take .08 hours (5 minutes) per individual, increasing burden by 122,400 hours.

We estimate that proprietary institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 566,100 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 96,237 hours.

We estimate that private non-profit institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 459,000 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 78,030 hours.

We estimate that public institutions will receive updated household size or the updated number of household members attending postsecondary educational institutions from 504,900 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 85,833 hours.

Collectively, we estimate that burden will increase for individuals and institutions as a result of being required to report updated household size and the updated number of household members attending postsecondary educational institutions by 382,500 hours in OMB Control Number 1845–0041, of which 122,400 hours is for individuals and 260,100 hours is for institutions.

This section also requires individuals to make changes to their FAFSA information if their marital status changes, but only at the discretion of the financial aid administrator because such an update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay. As a result, we estimate that of the 170,000 individuals that will have a change of marital status, we expect that this discretion will be applied in only ten percent of the cases, therefore, ten percent of the 170,000 estimated cases is 17,000 cases that on average the reporting will take .08 hours (5 minutes) per individual, increasing burden by 1,360 hours.

We estimate that proprietary institutions will receive updated marital status information from 6,290 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 1,069 hours.

We estimate that private non-profit institutions will receive updated marital status information from 5,100 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 867 hours.

We estimate that public institutions will receive updated marital status information from 5,610 applicants. We estimate that each updated record will take .17 hours (10 minutes) to review, which will increase burden by 954 hours.

Collectively, we estimate that burden will increase for individuals and institutions in their reporting updated marital status information by 4,250 hours in OMB Control Number 1845–0041.

Section 668.55 will also include a number of other changes to remove language that implements the marital status exception in the current regulations, including removing current § 668.55(a)(3) and revising § 668.55(b).

In total, the final regulatory changes reflected in § 668.55 will increase burden by 386,750 hours in OMB Control Number 1845–0041.

, . 668.56 I . B

The Department will eliminate from the regulations the five items that an institution currently is required to verify for all applicants selected for verification. Instead, pursuant to § 668.56(a), for each award year, the Secretary will specify in a . . notice the FAFSA information and documentation that an institution and an applicant may be required to verify. The Department will then specify on an individual student's SAR and ISIR what information must be verified for that applicant.

Currently, under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations of which 1,010,072 hours of burden are a result of the data gathering and submission by each individual applicant selected for verification. This estimate was based upon the number of applicants in the 2002–2003 award year. Since then, the number of applicants has grown significantly to 17.4 million applicants for the 2008–2009 award year, of which we project 5.1 million individual applicants to be selected for verification.

The projected number of items to be verified under the final regulations is expected to be reduced from the current five required data elements to an average of three items per individual. This projected reduction in items to be verified will result in a reduction of burden per individual applicant. Also, as a result of collecting information to verify applicant data on this smaller average number of data elements (three items instead of five items), the average amount of time for the individual applicant to review verification form instructions, gather the data, respond on a form and submit a form and the supporting data will decrease from the current average of .20 hours (12 minutes) per individual to .12 hours (7

minutes), thus further reducing burden on the individual applicant.

For example, when we consider the estimated 5.1 million 2008–2009 applicants selected for verification at an average of .20 hours (12 minutes) to collect and submit information, including supporting documentation for the five required data elements (which is the estimated amount of time that is associated with the requirements in current § 668.56(a)), the requirements in that section yields a total burden of 1,020,000 hours added to OMB Control Number 1845–0041. However, under § 668.56(b), where the number of verification data elements will be reduced to an average of three, the estimated 5.1 million individuals selected for verification multiplied by the reduced average of .12 minutes (7 minutes) yields an increase of 612,000 hours in burden. Therefore, we will expect the burden to be 408,000 hours less than under the current regulations.

As a result, for OMB reporting purposes, we estimate that the individuals, as a group, will have an increase in burden by 612,000 hours in OMB Control Number 1845–0041 (rather than 1,020,000 hours).

668.57 A
D

We have made a number of technical and conforming changes throughout § 668.57. We also have made the following substantive changes described in this section.

Section 668.57(a)(2) will allow an institution to accept, in lieu of an income tax return or an IRS form that lists tax account information, the electronic importation of data obtained from the IRS into an applicant's online FAFSA.

We also have amended § 668.57(a)(4)(ii)(A) to accurately reflect that, upon application, the IRS grants a six-month extension beyond the April 15 deadline rather than the four-month extension currently stated in the regulations.

Under § 668.57(a)(5), an institution may require an applicant who has been granted an extension to file his or her income tax return to provide a copy of that tax return once it has been filed. If the institution requires the applicant to submit the tax return, it will need to re-verify the AGI and taxes paid of the applicant and his or her spouse or parents when the institution receives the return.

Section 668.57(a)(7) clarifies that an applicant's income tax return that is signed by the preparer or stamped with the preparer's name and address must also include the preparer's Social Security number, Employer Identification Number or the Preparer Tax Identification Number.

Section 668.57(b) and (c) remain substantively unchanged.

We have deleted current § 668.57(d) regarding acceptable documentation for untaxed income and benefits and replaced it with a new § 668.57(d). This new section provides that, if an applicant is selected to verify other information specified in an annual . . . . notice, the applicant must provide the documentation specified for that information in the . . . . notice.

Currently under OMB Control Number 1845–0041, there are 1,022,384 hours of burden associated with the verification regulations, of which 12,312 hours are attributable to institutions of higher education to establish their verification policies and procedures. Under § 668.57, we estimate that, on average, institutions will take .12 hours (7 minutes) per applicant selected for verification to review and take appropriate action based upon the information provided by the applicant, which in some cases may mean correcting applicant data or having the applicant correct his or her data. Under current § 668.57, when we consider the significant increase to 17.4 million applicants in the 2008–2009 award year, of which 5.1 million will be selected for verification at an average of .20 hours (12 minutes) per verification response received from applicants by the institutions for review, the total increase in burden will be 1,020,000 additional hours. However, under § 668.57, both the average number of items to be verified will be reduced from five items to three items, as well as the average amount of time to review will decrease from .20 hours (12 minutes) to .12 hours (7 minutes). Therefore, the burden to institutions will be 612,000 burden hours (that is, 5.1 million multiplied by .12 hours (7 minutes))—rather than 1,020,000 burden hours (. ., 5.1 million applicants multiplied by .20 hours (12 minutes)). Thus, as compared to the burden under the current regulations, using the number of applicants from 2008–2009—17.4 million—there will be 408,000 fewer burden hours for institutions.

We estimate 226,440 hours of increased burden for proprietary institutions (2,086 proprietary institutions of the total 5,709 affected institutions or 37 percent multiplied by 5,100,000 applicants equals 1,887,000 applicants multiplied by .12 hours (7 minutes)).

We estimate 183,600 hours of increased burden for private non-profit institutions (1,731 private non-profit institutions of the total 5,709 affected institutions or 30 percent multiplied by 5,100,000 applicants equals 1,530,000 applicants multiplied by .12 hours (7 minutes)).

We estimate 201,960 hours of increased burden for public institutions (1,892 public institutions of the total 5,709 affected institution or 33 percent multiplied by 5,100,000 applicants multiplied by .12 hours (7 minutes)).

As a result, for OMB reporting purposes, collectively there will be a projected increase of 612,000 hours of burden for institutions in OMB Control Number 1845–0041.

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of information provided by the applicant if the applicant received funds on the basis of that information.

Both individuals (students) and institutions will be making corrections to FAFSA information as a result of the verification process. We estimate that 30 percent of the 17,000,000 applicants or 5,100,000 individuals (students) will be selected for verification. Of those 5,100,000 individuals, students will submit, on average, 1.4 changes in FAFSA information as a result of verification for 7,140,000 changes, which will take an average of .12 hours (7 minutes) per change, increasing burden to individuals by 856,800 hours.

We estimate that institutions will need to submit 10,200,000 changes in FAFSA information as a result of verification (that is, 5,100,000 individuals selected for verification multiplied by 2.0 changes, which is what we estimate will be the average per individual).

Of the estimated total 10,200,000 changes, we estimate that 3,774,000 changes to FAFSA information as a result of verification will occur at proprietary institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 452,880 hours.

Of the estimated total 10,200,000 changes, we estimate that 3,060,000 changes to FAFSA information as a result of verification will occur at private non-profit institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 367,200 hours.

Of the estimated total 10,200,000 changes, we estimate that 3,366,000 changes to FAFSA information as a result of verification will occur at public institutions, which will take an average of .12 hours (7 minutes) per change, increasing burden by 403,920 hours.

Collectively, therefore, the final regulatory changes reflected in § 668.59 will increase for individuals and institutions by 2,080,800 hours in OMB Control Number 1845–0041.

668.144 A

We have clarified and expanded the requirements in current §§ 668.143 and 668.144. In addition, we have consolidated all of the requirements for test approval in one section, § 668.144. Paragraphs (a) and (b) of § 668.144 describe the general requirement for test publishers and States to submit to the Secretary any test they wish to have approved under subpart J of part 668. Paragraph (c) of § 668.144 describes the information that a test publisher must include with its application for approval of a test. Paragraph (d) of § 668.144 describes the information a State must include with its application when it submits a test to the Secretary for approval.

Section 668.144(c)(16) will require test publishers to include in their applications a description of their test administrator certification process. Under § 668.144(c)(17), we will require test publishers to include in their applications, a description of the test anomaly analysis the test publisher will conduct and submit to the Secretary.

Finally, § 668.144(c)(18) will require test publishers to include in their applications a description of the types of accommodations available for individuals with disabilities, including a description of the process used to identify and report when accommodations for individuals with disabilities were provided.

We have added § 668.144(d) to describe what States must include in their test submissions to the Secretary. While this provision replaces the content in current § 668.143, its language has been revised to be parallel, where appropriate, to the test publisher submission requirements in current § 668.144. In addition to making these requirements parallel, § 668.144(d) also includes the new requirements to be added to the test publisher submissions. A description of those new provisions follows:

Both test publishers and States will be required to submit a description of their test administrator certification process that indicates how the test publisher or State, as applicable, will determine that a test administrator has the necessary training, knowledge, skills and integrity to test students in accordance with requirements and how the test publisher or the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release (see § 668.144(c)(16) (test publishers) and § 668.144(d)(7) (States)).

We estimate that a test publisher and State will, on average, take 2.5 hours to develop its process to establish that a test administrator has the necessary training, knowledge, skills and integrity to administer ability-to-benefit (ATB) tests and then to report that process to the Secretary.

We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the test publishers and States by 20 hours.

The regulations will require both test publishers and States to submit a description of the test anomaly analysis they will conduct. This description must include a description of how they will identify potential test irregularities and make a determination that test irregularities have occurred; an explanation of corrective action to be taken in the event of test irregularities; and information on when and how the Secretary, test administrator, and institutions will be notified if a test administrator is decertified (see § 668.144(c)(17) (test publishers) and § 668.144(d)(8) (States)).

We estimate that each test publisher and State will, on average, take 75 hours to develop its test anomaly process, to establish its test anomaly analysis (where it explains its test irregularity detection process including its decertification of test administrator process) and to establish its reporting process to the Secretary. We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the test publishers and States by 600 hours.

Under § 668.144(c)(18) and (d)(9) respectively, both test publishers and States will be required to describe the types of accommodations available for individuals with disabilities, and the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided. We estimate that test publishers and States will, on average, take 1 hour to develop and describe to the Secretary the types of accommodations available to individuals with disabilities, to describe the process the test administrator will use to support the identification of the disability and to develop the process to report when accommodations will be used.

We estimate that the burden associated with the currently approved eight (8) ATB tests will increase for the current test publishers by 8 hours.

Collectively, the final regulatory changes in § 668.144 will increase burden for test publishers and States by 628 hours in OMB 1845–0049.

668.150 A B -P

Section 668.150 provides that States, as well as test publishers, must enter into agreements with the Secretary in order to have their tests approved.

We also have revised this section to require both test publishers and States to comply with a number of new requirements that will be added to the agreement with the Secretary.

These requirements will include:

Requiring the test administrators that they certify to provide them with certain information about whether they have been decertified (see § 668.150(b)(2)).

We estimate that 3,774 individuals (test administrators) will take, on average, .17 hours (10 minutes) to access, read, complete and submit the written certification to a test publisher or State, which will increase burden by 642 hours.

We estimate that it will take each test publisher or State 1 hour per test submission to develop its process to obtain a certification statement from each prospective test administrator, which will increase burden by 8 hours.

We estimate that the review of the submitted written certifications by the test publishers or States for the 3,774 test administrators will take, on average, .08 hours (5 minutes) per certification form, which will increase burden by 302 hours.

With regard to the requirement to immediately notify the test administrator, the Secretary, and institutions when the test administrator is decertified (see § 668.150(b)(6)), we estimate that 1 percent of the 3,774 test administrators will be decertified. We estimate that it will take test publishers and States, on average, 1 hour per decertification to provide all of the final notifications, which will increase burden for test publishers and States by 38 hours.

With regard to the requirement to review test results of tests administered by a decertified test administrator and immediately to notify affected institutions and students (see § 668.150(b)(7)), we estimate that burden will increase. We estimate that 481,763 ATB tests will be taken for title IV, HEA purposes annually. Of the annual total of ATB tests provided, we estimate that 1 percent will be improperly administered and that 4,818 individuals will be contacted, which will take, on average, .25 hours (15 minutes) per individual. As a result, we estimate that burden will increase to test publishers and States by 1,205 hours.

In addition, we estimate that it will take test publishers and States, on average, 5 hours per ATB test submitted, to develop the process to determine when ATB tests have been improperly administered, which for 8 approved ATB tests will increase burden by 40 hours.

We estimate that test publishers and States will, on average, take .33 hours (20 minutes) for each of the 4,818 estimated improperly administered ATB tests to make the final notifications to institutions, students and prospective students, which will increase burden by 1,590 hours.

We estimate that 38 test administrators (1 percent of the 3,774 test administrators) will be decertified. Of the 38 decertified test administrators, we estimate that 1 previously de-certified test administrator (2 percent of 38 test administrators) will be re-certified after a three-year period and, therefore, reported to the Secretary. We estimate the burden for test publishers and States for this reporting will be 1 hour. We project that it will be very rare that a decertified test administrator will seek re-certification after the three-year decertification period.

Under § 668.150(b)(13), test publishers and States must provide copies of test anomaly analysis every 18 months instead of every 3 years. We estimate that it will take a test publisher or State, on average, 75 hours to conduct its test anomaly analysis and report the results to the Secretary every 18 months. We estimate the burden on test publishers and States for the submission of the 8 test anomaly analysis every 18 months will be 600 hours.

Under § 668.150(b)(15), test publishers and States will be required to report to the Secretary any credible information indicating that a test has been compromised (see § 668.150(b)(15)). We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. Of that total number ATB tests given, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers and States will take 1 hour per test to collect the credible information to make the determination that a test will be compromised and report it to the Secretary. We estimate that burden will increase by 482 hours.

Section 668.150(b)(16) will require test publishers and States to report to the Office of Inspector General of the Department of Education any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud or other misconduct. We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. Of that total number ATB tests given, we estimate that 482 ATB tests will be compromised. On average, we estimate that test publishers or States will take 1 hour per test to collect the credible information to make the determination that a test administrator or institution may have engaged in fraud or other misconduct and report it to the U.S. Department of Education's Office of the Inspector General. We estimate that, as a result of this requirement, burden will increase by 482 hours.

Section 668.150(b)(17) requires a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State the nature of the disability and the accommodations that were provided. Census data indicate that 12 percent of the U.S. population is severely disabled. We estimate that 12 percent of the ATB test population (481,763 ATB test takers) or 57,812 of the ATB test takers will be individuals with disabilities that will need accommodations for an ATB test. We estimate that it will take .08 hours (5 minutes) to report the nature of the disability and any accommodation that the test administrator made for the test taker, increasing burden by 4,625 hours.

We estimate that, on average, test publishers and States will take 2 hours per ATB test to develop the process for having test administrators report the nature of the test taker's disability and any accommodations provided. We expect this to result in an increase burden for test publishers and States by 16 hours (2 hours multiplied by 8 ATB tests).

Collectively, the final changes reflected in § 668.150 will increase burden by 10,031 hours in OMB Control Number 1845–0049.

668.151 A

Section 668.151(g)(4) will require institutions to keep a record of each individual who took an ATB test and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State.

We estimate that 481,763 ATB tests for title IV, HEA purposes will be given on an annual basis. We estimate that proprietary institutions will give 173,445 tests (36 percent of those ATB tests) and that, on average, the amount of time to record the test takers' name and address as well as the test administrators' identifiers will be .08 hours (5 minutes) per test, increasing burden for proprietary institutions by 13,876 hours.

We estimate that private non-profit institutions will give 149,347 tests (31 percent of the total annual ATB tests given) and that, on average, the amount of time to record the test takers' name and address, as well as the test administrators' identifiers will be .08 hours (5 minutes) per test, increasing burden for private non-profit institutions by 11,948 hours.

We estimate that public institutions will give 158,962 tests (33 percent of the total annual ATB tests given) and that, on average, the amount of time to record the test takers' name and address as well as the test administrators' identifiers

have Adobe Acrobat Reader, which is available free at this site.

: The official version of this document is the document published in the . Free Internet access to the official edition of the and the Code of Federal Regulations is available on GPO Access at: ://

(Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/SMART; 84.379 TEACH Grant Program)

34 CF P 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CF P 602

Colleges and universities, Reporting and recordkeeping requirements.

34 CF P 603

Colleges and universities, Vocational education.

34 CF P 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Incorporation by reference, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CF P 682

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CF P 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CF P 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CF P 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CF P 691

Colleges and universities, Elementary and secondary education, Grant programs-education, Student aid.

Dated: October 18, 2010.

A ,
E .

■ For the reasons discussed in the preamble, the Secretary amends parts 600, 602, 603, 668, 682, 685, 686, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

A 600 A B A A - 1965, A A

■ 1. The authority citation for part 600 continues to read as follows:

A : 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:
■ A. Adding, in alphabetical order, the definition of a .
■ B. Revising the definition of .
The addition and revision read as follows:

600.2

* * * * *

: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

* * * * *

: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O*NET–SOC code established by the Department of Labor and available at :// or its successor site; or

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

* * * * *

■ 3. Section 600.4 is amended by:
■ A. In paragraph (a)(3), adding the words, "in accordance with § 600.9" immediately after the word "located".
■ B. Revising paragraph (a)(4)(i)(C).
The revision reads as follows:

600.4

(a) * * *
(4) * * *
(i) * * *

(C) That is at least a one academic year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation; and

* * * * *

600.5 A

■ 4. Section 600.5(a)(4) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

600.6 A

■ 5. Section 600.6(a)(3) is amended by adding the words, "in accordance with § 600.9" immediately after the word "located".

■ 6. Section 600.9 is added to subpart A to read as follows:

600.9

(a)(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(i)(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure

requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

(Authority: 20 U.S.C. 1001 and 1002)

A 602 A ' - A A

■ 7. The authority citation for part 602 continues to read as follows:

A : 20 U.S.C. 1099b, unless otherwise noted.

■ 8. Section 602.24 is amended by adding a new paragraph (f) to read as follows:

602.24 A

* * * * *

(f) *C* . The accrediting agency, as part of its review of an institution for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The accrediting agency meets this requirement if—

(i) It reviews the institution's—

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

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, an accrediting agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (f)(1)(i)(B) of this section.

(3) The accrediting agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (f)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

A 603 A ' - A A

■ 9. The authority citation for part 603 is revised to read as follows:

A : 20 U.S.C. 1001, 1002, 1094(c)(4); 38 U.S.C. 3675, unless otherwise noted.

■ 10. Section 603.24 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the authority citation after redesignated paragraph (d) to read as follows:

603.24

* * * * *

(c) *C* . The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The State agency meets this requirement if—

(i) It reviews the institution's—

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

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.

(3) The State agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

* * * * *

(A) No later than October 1, 2011 for information from the 2006–07 award year to the extent that the information is available;

(B) No later than October 1, 2011 for information from the 2007–08 through 2009–10 award years; and

(C) No earlier than September 30, but no later than the date established by the Secretary through a notice published in the , for information from the most recently completed award year.

(ii) For any award year, if an institution is unable to provide all or some of the information required under paragraph (a)(1) of this section, the institution must provide an explanation of why the missing information is not available.

(b) *D* . (1) For each program offered by an institution under this section, the institution must provide prospective students with—

(i) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site. If the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at :// / is more than ten, the institution may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program;

(ii) The on-time graduation rate for students completing the program, as provided under paragraph (c) of this section;

(iii) The tuition and fees it charges a student for completing the program within normal time as defined in § 668.41(a), the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institutions makes available under § 668.43(a);

(iv) The placement rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) when that rate is available. In the meantime, beginning on July 1, 2011, if the institution is required by its accrediting agency or State to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the accrediting agency or State methodology to calculate a placement rate for the program and disclose that rate; and

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) For each program, the institution must—

(i) Include the information required under paragraph (b)(1) of this section in promotional materials it makes available to prospective students and post this information on its Web site;

(ii) Prominently provide the information required under paragraph (b)(1) of this section in a simple and meaningful manner on the home page of its program Web site, and provide a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information;

(iii) Display the information required under paragraph (b)(1) of this section on the institution's Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information; and

(iv) Use the disclosure form issued by the Secretary to provide the information in paragraph (b)(1), and other information, when that form is available.

(c) *O* . An institution calculates an on-time completion rate for each program subject to this section by—

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under § 668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C 1001(b), 1002(b) and (c))

■ 15. Section 668.8 is amended by:

■ A. Revising paragraph (c)(3).

■ B. In paragraph (d)(2)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

■ C. In paragraph (d)(3)(iii), adding the words, "as provided under § 668.6" immediately after the word "occupation."

■ D. Revising paragraphs (k) and (l).

The revisions read as follows:

668.8 .

* * * * *

(c) * * *

(3) Be at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.

* * * * *

(k) . (1) Except as provided in paragraph (k)(2) of this section, if an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for

purposes of the title IV, HEA programs, unless—

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

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

(A) The institution's degree requires at least two academic years of study; and

(B) The institution demonstrates that students enroll in, and graduate from, the degree program.

(2) A program is considered to be a clock-hour program for purposes of the title IV, HEA programs if—

(i) Except as provided in paragraph (k)(3) of this section, a program is required to measure student progress in clock hours when—

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

(B) Completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;

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

(iii) The institution does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except as provided in § 668.4(e), requires attendance in the clock hours that are the basis for the credit hours awarded.

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

(l) *[illegible]*. (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section, if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions, for participation in the title IV, HEA programs has identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as—

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

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

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

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

■ 16. Section 668.14 is amended by revising paragraph (b)(22) to read as follows:

668.14 [illegible]

* * * * *

(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds.

(A) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(B) For the purpose of paragraph (b)(22) of this section, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

(ii) Notwithstanding paragraph (b)(22)(i) of this section, eligible institutions, organizations that are contractors to eligible institutions, and other entities may make—

(A) Merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; and

(B) Profit-sharing payments so long as such payments are not provided to any person who is engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(iii) As used in paragraph (b)(22) of this section,

(A) *[illegible]* means a sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

(B) *[illegible]* means activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(*1*) These activities include contact in any form with a prospective student, such as, but not limited to—contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application.

(*2*) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—

( ) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student's enrollment agreement or financial aid application; or

(

(*2*) The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.

(iii)(A) If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student's enrollment status continues to ebe or she nq including fundmen unnsi)s teuessectiosehat we 1 -1.m-based cred[a BwithT*(with par(a)24 * 9 54 72nt period o(3 thiswitAn

(e) * * *

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

(f) Maintains satisfactory academic progress in his or her course of study according to the institution's published standards of satisfactory academic progress that meet the requirements of § 668.34.

* * * * *

■ 21. Section 668.34 is revised to read as follows:

668.34

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

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

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

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

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

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

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

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

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

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

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

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

(8) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(9) If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs;

(ii) The basis on which a student may file an appeal: The death of a relative, an injury or illness of the student, or other special circumstances; and

(iii) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(10) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs; and

(11) The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

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

A . Appeal means a process by which a student who is not meeting the institution's satisfactory academic progress standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program assistance.

F : . Financial aid probation means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

F . Financial aid warning means a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

M . Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

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

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

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

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

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

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

(ii) The student appeals the determination; and

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

(B) The institution develops an academic plan for the student that, if

668.52

The following definitions apply to this subpart:

: (1) The calendar year preceding the first calendar year of an award year, ., the base year; or

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

: Title IV, HEA programs for which eligibility is determined on the basis of an applicant's EFC. These programs include the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, and Direct Subsidized Loan programs.

: Title IV, HEA programs for which eligibility is not based on an applicant's EFC. These programs include the Teacher Education Assistance for College and Higher Education (TEACH) Grant, Direct Unsubsidized Loan, and Direct PLUS Loan programs.

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

668.53

(a) An institution must establish and use written policies and procedures for verifying an applicant's FAFSA information in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant must provide any documentation requested by the institution in accordance with § 668.57;

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

(3) The method by which the institution notifies an applicant of the results of its verification if, as a result of verification, the applicant's EFC changes and results in a change in the amount of the applicant's assistance under the title IV, HEA programs;

(4) The procedures the institution will follow itself or the procedures the institution will require an applicant to follow to correct FAFSA information determined to be in error; and

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

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

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

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

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

update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

(Approved by the Office of Management and Budget under control number 1845–0041)

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

668.56 . . .

(a) For each award year the Secretary publishes in the . . . notice the FAFSA information that an institution and an applicant may be required to verify.

(b) For each applicant whose FAFSA information is selected for verification by the Secretary, the Secretary specifies the specific information under paragraph (a) of this section that the applicant must verify.

(Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094, 1095)

668.57 A .

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

(a) *A G I (AGI),* . (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution must require an applicant selected for verification of AGI, income earned from work or U.S. income tax paid to submit to it—

(i) A copy of the income tax return or an Internal Revenue Service (IRS) form that lists tax account information of the applicant, his or her spouse, or his or her parents, as applicable for the specified year. The copy of the return must include the signature (which need not be an original) of the filer of the return or of one of the filers of a joint return;

(ii) For a dependent student, a copy of each IRS Form W–2 for the specified year received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

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

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

(A) Filed a joint return; and

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

(2) An institution may accept, in lieu of an income tax return or an IRS form that lists tax account information, the information reported for an item on the applicant's FAFSA for the specified year if the Secretary has identified that item as having been obtained from the IRS and not having been changed.

(3) An institution must accept, in lieu of an income tax return or an IRS form that lists tax account information, the documentation set forth in paragraph (a)(4) of this section if the individual for the specified year—

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

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

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide an IRS form that lists tax account information.

(4) An institution must accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed and is not required to file an income tax return for the specified year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the FAFSA; and

(B) Amounts of income from each source. In lieu of a certification of these amounts of income, the applicant may provide a copy of his or her IRS Form W–2 for each source listed under paragraph (a)(4)(i)(A) of this section;

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

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

(B) A copy of each IRS Form W–2 that the individual received for the specified year, or for a self-employed individual, a statement signed by the individual certifying the amount of the AGI for the specified year; and

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

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

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

(5) An institution may require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed and signed income tax return when filed. If an institution receives the copy of the return, it must reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

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

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that includes the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed, stamped, typed, or printed with the name and address of the preparer of the return.

(b) *N* . An institution must require an applicant selected for verification of the number of family members in the household to submit to it a statement signed by both the applicant and one of the applicant's parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *N* . (1) An institution must require an applicant selected for verification of the number of household members in the applicant's family enrolled on at least a half-time basis in eligible postsecondary institutions to submit a statement signed by both the applicant and one of the applicant's parents, if the applicant is a dependent student, or by only the applicant if the applicant is an independent student, listing—

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

(ii) The age of each student; and

(iii) The name of the institution that each student is or will be attending.

668.60

(a) An institution must require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documentation set forth in § 668.57 that

M i i i i i : Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

P i i i i : Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

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

668.75

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.

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

■ 25. Subpart J of part 668 is revised to read as follows:

Sec.
668.141 Scope.
668.142 Special definitions.
668.143 [Reserved]
668.144 Application for test approval.
668.145 Test approval procedures.
668.146 Criteria for approving tests.
668.147 Passing scores.
668.148 Additional criteria for the approval of certain tests.
668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.
668.150 Agreement between the Secretary and a test publisher or a State.
668.151 Administration of tests.
668.152 Administration of tests by assessment centers.
668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.
668.154 Institutional accountability.
668.155 [Reserved]
668.156 Approved State process.

668.141

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

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

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

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

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

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

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

(4) The information that a test publisher or a State must submit, as part of its test submission, to expla

for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

: An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

: A question on a test.

: An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder's interests regarding the test.

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

668.143

668.144 A

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

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.

(c) A test publisher must include with its application—

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

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

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

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

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

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

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

(8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;

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

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(3) and an analysis of the effects of time on performancecoreviews te ntars of the

(1) The information necessary for the Secretary to determine that the test the State uses measures a student's skills and abilities for the purpose of determining whether the student has the

(i) One hundred and twenty days from the date the notice of revocation is published in the [illegible]; or

(ii) An earlier date specified by the Secretary in a notice published in the [illegible].

(Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.146 [illegible]

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if—

(1) The test meets the criteria set forth in paragraph (b) of this section;

(2) The test publisher or the State satisfies the requirements set forth in paragraph (c) of this section; and

(3) The Secretary makes a determination that the information the test publisher or State submitted in accordance with § 668.144(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

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

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

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

(i) Adequately represent each domain; and

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

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

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

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

(6) Meet all standards for test construction provided in the 1999 edition of the [illegible], prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377–4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: [illegible]. The document also may be obtained from the American Educational Research Association at: [illegible]; and

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

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

(1) Include in the test booklet or package—

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

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

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

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

(4) Norm the test with—

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

(ii) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States; and

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.147 [illegible]

Except as provided in §§ 668.144(d), 668.148, and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score (5g0c0frib9wucat(diploma in quantitative skills, a distribution of test scores as described in paragraph (c)t reliability.

(c) In order for a test to be approved

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

(10) If a computer-based test is used, provide the test administrator with software that will—

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher or the State, as applicable, a record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and

(iii) Prohibit any changes in test taker responses or test scores;

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

(12) Keep each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the tests results, described in paragraph (b)(13) of this section, was sent to the Secretary;

(13) Analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after the test was approved and every 18 months thereafter during the period of test approval;

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

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

(16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud, or other misconduct; and

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

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

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

(3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary publishes a notice in the . . . / . . specifying when institutions may no longer use the test publisher's or the State's test(s) for purposes of determining a student's eligibility for title IV, HEA program funds.

(Approved by the Office of Management and Budget under control number 1845–0049)

(Authority: 20 U.S.r

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the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide weekly to the test publisher or the State, as applicable—

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

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

(Approved by the Office of Management and Budget under control number 1845–0049)

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

668.153 A

(a) *I* . For an individual whose native language is not English and who is not fluent in English, the institution must use the following tests, as applicable:

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

(2) If the individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, the individual must take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.

(3) If the individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the individual does not enroll in any ESL component offered, the individual must take a test in English approved under § 668.146.

(4) If the individual enrolls in an ESL program, the individual must take an ESL test approved under § 668.148(b).

(5) If the individual enrolls or plans to enroll in a program that is taught in the student's native language that either has an ESL component or a portion of the program will be taught in English, the individual must take an English proficiency test approved under § 668.148(b) prior to beginning the portion of the program taught in English.

(b) *I* . (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for title IV, HEA program funds and seeks to show his or her ability to benefit through the testing procedures in this subpart, an institution must use a test described in § 668.148(a)(2) or § 668.149(a).

(2) The test must reflect the individual's skills and general learned abilities.

(3) The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an individual's disability may be satisfied by—

(i) A written determination, including a diagnosis and information about testing accommodations, if such accommodation information is available, by a licensed psychologist or physician; or

(ii) A record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the individual's disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1845–0049)

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

668.154

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

(a) The institution used a test that was not administered independently, in accordance with § 668.151(b);

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

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

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

668.155

668.156 A

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

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

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

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as

determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six month period.

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

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

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

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

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

(i) Successfully completed education or training programs;

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

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

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

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

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

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

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

(Approved by the Office of Management and Budget under control number 1845–0049)

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

■ 26. Section 668.164 is amended by:

■ A. In paragraph (g)(2)(i), removing the words "Except in the case of a parent PLUS loan, the", and adding, in their place, the word "The".

■ B. In paragraph (g)(4)(iv), removing the words "a Federal Pell Grant, an ACG, or a National SMART Grant", and adding, in their place, the words "any title IV, HEA program assistance".

■ C. Adding paragraph (i).

The addition reads as follows:

668.164 [illegible]

* * * * *

(i) *Pa[illegible]*

(1) An institution must provide a way for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (e) of this section.

(2) The amount the institution provides to the Federal Pell Grant eligible student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

■ 33. Section 686.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".
■ B. In paragraph (d), revising the definition of *P j D j* to read as follows:

686.2 . . .

* * * * *

(d) * * *

P j D j : An electronic record that is provided to the Secretary by an institution showing student disbursement information.

* * * * *

■ 34. Section 686.37 is amended by revising paragraph (b) to read as follows:

686.37 . . .

* * * * *

(b) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the . . . / . . , and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

* * * * *

A 690 – A A

■ 35. The authority citation for part 690 continues to read as follows:

A : 20 U.S.C. 1070a, 1070g, unless otherwise noted.

690.2 A

■ 36. Section 690.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the term "Credit hour".
■ B. In paragraph (b), adding, in alphabetical order, the terms "Institutional student information record (ISIR)", "Student aid report (SAR)", "Valid institutional student information record (valid ISIR)", and "Valid student aid report (valid SAR)".
■ Valid student aid report (valid SAR)5 To7-0.Section 690.2 is amended by:
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which a student may opt out of the way the institution provides for the student to purchase books and supplies by the seventh day of classes of a payment period. In addition, § 668.164(i) has been revised to specify that if a Federal Pell Grant eligible student uses the method provided by the institution to purchase books and supplies, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under § 668.164(d)(1)(iv) and § 668.165(b) for this purpose only.

We also have updated the definition of - to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the

evidence that the student transferred to a higher credentialed program at another institution. To ensure the information is accessible, § 668.6(b) has been revised to require an institution to provide a prominent and direct link to information about a program on the home page of its Web site and on other pages where general, academic, or admissions information is provided about the program. The information must also be provided in promotional materials conveyed to prospective students. The information must be provided in a simple and meaningful manner. The information to be disclosed includes the on-time graduation rate, the total amount of tuition and fees the institution charges a student for completing the program within normal time, the typical costs for books and supplies, unless included as part of tuition and fees, and the amount of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but must provide a Web link or access to the program cost information it makes available under § 668.43(a). The Department intends to develop in the future a disclosure form and will be seeking public comment about the design of the form through the information collection process under the Paperwork Reduction Act of 1995 (PRA). Until a form is developed and approved under the PRA process, institutions must comply with the disclosure requirements independently.

Another area of disclosure is providing students information about potential occupations by linking to O*Net. Commenters expressed concern that this would require an unwieldy amount of data for some degree programs and the resulting information overload would not serve to accurately inform students. Section 668.6(b) has been revised so that if the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at [illegible] is more than ten, an institution is allowed to provide prospective students with Web links to a representative sample of the SOCs for which its graduates typically find employment within a few years after completing the program.

In response to comments that the proposed placement rate was administratively complex and overly burdensome, we decided to direct the National Center for Education Statistics (NCES) to develop a placement rate methodology and the processes necessary for determining and documenting student employment and reporting placement data to the Department using IPEDS no later than July 1, 2012. The collaborative process used by NCES and the opportunity for public comment on the proposed measure will allow for a considered review and development of a meaningful placement rate. Section 668.6(b) has been revised to specify that an institution must disclose for each program the placement rate calculated under a methodology developed by its accrediting agency, State, or NCES. The institution would have to disclose the accrediting agency or State-required placement rate beginning on July 1, 2011 and to identify the accrediting agency or State under whose requirements the rate was calculated. The NCES-developed rate would have to be disclosed when the rates become available.

To remove uncertainty and to ensure a consistent calculation, we have revised § 668.6(b) to specify how an institution calculates an on-time completion rate for its programs. This is a measure designed to provide students meaningful information about the extent to which former students completed the program within the published length. As described elsewhere in this preamble, the on-time completion rate will be calculated by: (1) Determining the number of students who completed the program during the most recently completed calendar year; (2) determining the number of students in step (1) who completed the program within normal time, regardless of whether the students transferred into the program or changed programs at the institution; and (3) dividing the number of students who completed in normal time in step (2) by the total number of completers in step (1) and multiplying by 100.

We also received comments about the use of median loan debt, the definition of [illegible], and the treatment of debt incurred at prior programs or institutions. The examples that we provide earlier in this preamble clarify the treatment of loan debt from prior programs and institutions. In general, median loan debt for a program at an institution does not include debt incurred by students in attending a prior institution, unless the prior and current institutions are under common ownership or control or are otherwise related entities. In cases where a student changes programs while attending an institution or matriculates to a higher credentialed program at the institutions, the Department will associate the total amount of debt incurred by the student to the program the student completed. In order to perform the calculation of the median loan debt, § 668.6(a) has been revised to provide that an institution must provide information about whether a student matriculated to a higher credentialed program at the same institution, or, if it has evidence, that a student transferred to a higher credentialed program at another institution.

The provisions related to State authorization generated comments from those who supported the regulations as an effort to address fraud and abuse in Federal programs through State oversight and from others who believed the regulations infringed on States' authority and upset the balance of the "Triad" of oversight by States, accrediting agencies, and the Federal Government. We clarified that the final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility as an institution may be legally authorized by the State based on methods such as State charters, State laws, State constitutional provisions, or articles of incorporation that authorize an entity to offer educational programs beyond secondary education in the State.

We revised § 600.9 to clarify that an institution's legal authority to offer postsecondary education in a State must be by name and, thus, it must include the name of the institution being authorized. We have removed proposed § 600.9(b)(2) regarding adverse actions. In response to concerns about the effect on distance education and reciprocity arrangements, we clarified that an institution must meet any State requirements for it to be legally offering distance or correspondence education in that State and must be able to document to the Secretary the State's approval upon request. Thus, a public institution is considered to comply with § 600.9 to the extent it is operating in its home State, and, if operating in another State, it would be expected to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement that may be applicable. In making these clarifications, we are not preempting any State laws, regulations, or other requirements regarding reciprocal agreements, distance education, or correspondence study.

We also have revised the State authorization provisions in § 600.9 to distinguish between a legal entity that is established as an educational institution and one established as a business or nonprofit entity. An institution authorized as an educational institution may be exempted by name from any State approval or licensure requirements based on the institution's accreditation by an accrediting agency recognized by the Secretary or based on the institution being in operation for at least 20 years. An institution established as a business or nonprofit charitable organization and not specifically as an educational institution may not be exempted from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption. Chart A illustrates the basic principles of § 600.9 of these final regulations, with additional examples discussed in the preamble to these regulations.

CHART A—STATE AUTHORIZATION REQUIREMENTS

[Meets state authorization requirements*]

Legal entity	Entity description	Approval or licensure process
Educational institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name.
Charitable organization	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.

*

- Federal, tribal, and religious institutions are exempt from these requirements.
- A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals.
- The chart does not take into requirements related to State reciprocity.

To maintain the State's role in student consumer protection and handling student complaints related to State laws, we have revised § 668.43(b) to provide that an institution must make available to students or prospective students contact information for not only the State approval or licensing entities but also any other relevant State official or agency that would appropriately handle a student's complaint.

Finally, we have clarified the meaning of a religious institution for the applicability of the religious exemption. We also have expanded § 600.9(b) to provide that an institution is considered to be legally authorized by the State if it is exempt from State authorization as a religious institution by State law, in addition to the provision of the proposed regulations that an institution be exempt from State authorization as a religious institution under the State's constitution. We also have included a definition of a providing that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious certificates including, but not limited to, a certificate of Talmudic studies, an associate of biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

In response to comments, we confirmed that tribal institutions are not subject to State oversight or subject to the State process for handling complaints and revised § 600.9 to clarify the status of tribal institutions. As noted in the preamble discussion of State Authorization, we have removed proposed § 600.9(b)(2) regarding adverse actions. Further, we are providing that, in § 600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

Finally, while the Secretary has designated amended § 600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

As discussed in the preamble to these regulations, we made a number of clarifying changes to the regulations regarding the administration of ability to benefit tests. We revised the definition of the term to clarify that an independent test administrator must have no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned through the agreement to administer the test.

rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used governmentwide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, however, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact these regulations would have on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *A ,L ,D* . Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: Two-year proprietary institutions, two-year public and private, not-for-profit institutions; freshmen and sophomores at four-year institutions, juniors and seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The Department estimates no budgetary impact for most of these regulations as there is no data indicating that the provisions will have any impact on the volume or composition of the title IV, HEA programs.

A ,L ,D

The impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2008 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Data on administrative burden at participating institutions are extremely limited; accordingly, in the NPRM, the Department expressed interest in receiving comments in this area. No comments were received.

Elsewhere in this A section we identifyData five risk categories: Tw.s. 8 269.-5.919j/T14 1 (instion RepfTjTy, he ocia integrate our diin)Tjt

regulations on individuals is not subject to the Regulatory Flexibility Act.

As discussed in the preamble to these regulations, the program integrity regulations were developed to update administrative procedures for the Federal student aid programs and to ensure that funds are provided to students at eligible programs and institutions. As detailed in the *P i , i A i 1995* section of these final regulations, many of these regulations modify existing regulations and requirements. For example, the regulations on FAFSA verification would change the number of items to be verified, but do not require the creation of a new process. The table below summarizes the estimated total hours, costs, and requirements applicable to small entitiese