

BREAKOUT SESSION #7

Regulatory Landscape – Looking Ahead at New Regulations

1. Financial Responsibility
2. Certification Procedures
3. Administrative Capability
4. Ability to Benefit (ATB)

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2023 FSA Training Conference for Financial Aid Professionals

AGENDA

1. Negotiated Rulemaking Committee
2. Notice of Proposed Rulemaking (NPRM)
3. Topics in the NPRM that we will discuss today
 1. Financial Responsibility
 2. Certification Procedures
 3. Administrative Capability Standards
 4. Ability to Benefit (ATB)



HOW WE GOT HERE

1. Negotiated Rulemaking Committee met virtually*

1. January 18-21, 2022
2. February 14-18, 2022
3. March 14-18, 2022
4. Five topics negotiated
 1. Gainful Employment (GE)
 2. Financial Responsibility
 3. Certification Procedures
 4. Administrative Capability
 5. Ability to Benefit (ATB), the only topic where consensus was achieved by the committee



*For information about how Negotiated Rulemaking works, see Breakout #22 - Understanding the Negotiated Rulemaking Process

TIMELINE

1. Topics in the NPRM published May 19, 2023

- | | | |
|-----------------------------|------------------------------|-----------------------|
| 1. Gainful Employment (GE) | 3. Certification Procedures | 5. Ability to Benefit |
| 2. Financial Responsibility | 4. Administrative Capability | |

2. Final Rules

1. Regulations addressing GE were published in the Federal Register on October 10, 2023
 - Implementation on July 1, 2024
2. Regulations addressing the other four topics were published in the Federal Register on October 31, 2023
 - Implementation on July 1, 2024



TODAY'S PRESENTATION - NON-GE* REGULATORY PACKAGE

1. Financial Responsibility
2. Certification Procedures
3. Administrative Capability
4. Ability to Benefit (ATB)



FEDERAL REGISTER
The Daily Journal of the United States Government

Each of these topics has a variety of requirements some of which are fairly complex. Therefore, we will provide an overview of these four areas of Title IV administration with the understanding that this presentation does not include every provision contained in the Final Rules.

*For information on the GE Final Rules, see Breakout Session #6

FINANCIAL RESPONSIBILITY



FINANCIAL RESPONSIBILITY - REGULATION ORGANIZATION

- 34 CFR §668.23
 - Contains regulations concerning audited financial statements and compliance audits
- 34 CFR part 668 subpart L (§§ 171-177)
 - Standards of financial responsibility
 - Triggers
 - Recalculation of composite scores
 - Alternative standards
 - Change in ownership financial standards in a new §176
- 34 CFR §668.15
 - Previously had financial responsibility standards that were used for change in ownership
 - §668.15 has been removed and reserved
- All standards of financial responsibility are now housed in subpart L



FINANCIAL RESPONSIBILITY - §668.23

AUDIT SUBMISSION REQUIREMENTS

- The annual audit submission deadline has been modified to be the earlier of:
 - 30 days after the date of the auditor's report; or
 - Six months after the end of the institution's fiscal year (FY) (this is the current deadline)
- If the compliance audit and audited financial statements have different dates, the later of those two would be operative for this deadline requirement
- FY used by the institution for this requirement must match the FY used for returns submitted to the United States Internal Revenue Service (IRS)

FINANCIAL RESPONSIBILITY - §668.171(b)

GENERAL REQUIREMENTS

- General standards of financial responsibility include:
 - Ability to make refunds according to its refund policy*
 - Ability to return funds according to the Return of Title IV rules*
 - Ability to pay ED any debts or liabilities arising from the institution's participation in the Title IV programs*
 - Ability to pay Title IV credit balances, as required
 - Making payments in accordance with any existing undisputed financial obligation
 - Making payroll payments in accordance with its published payroll schedule
 - Not borrowing funds from retirement or restricted funds without authorization



* in existing regulation

FINANCIAL RESPONSIBILITY - §668.171(c)&(d)

FINANCIAL TRIGGERS

- Financial stability is generally established by reviewing and scoring the institution's audited financial statements
 - 1.5 and above is a passing composite score
 - 1.0 up to 1.5 is a composite score "in the zone"
 - Below 1.0 is failing
- There are alternatives to continue participation when in the zone or failing
- Triggers are financial events or conditions that generally occur between audited financial statement submissions and may demonstrate a significant adverse effect on the institution's financial condition
- The Department's intention in this scenario is to obtain financial protection from the institution to protect the interests of students and taxpayers

FINANCIAL RESPONSIBILITY - §668.171(c)&(d)

FINANCIAL TRIGGERS

- There are three kinds of financial triggers
 1. Mandatory trigger that involves recalculating the institution's most recent financial composite score and trigger is activated if the recalculated composite score is failing
 2. Mandatory trigger that does not result in any recalculation of the composite score



FINANCIAL RESPONSIBILITY - §668.171(c)&(d)

FINANCIAL TRIGGERS

Three kinds of financial triggers, cont'd.

3. Discretionary trigger is activated after ED's review of the condition or event and a determination is made by ED that the condition or event will have a significant adverse effect on the institution's financial condition

Triggers will lead to a requirement for the institution, when applicable, to provide financial protection, usually a letter or credit or posting cash to be held in escrow



FINANCIAL RESPONSIBILITY - §668.171(c)

MANDATORY TRIGGERS

- Examples of a mandatory trigger when the financial composite score is recalculated
 - If the institution's last calculated score is less than 1.5, and the institution has entered against it a final monetary judgment or award from a legal proceeding, and as a result, the institution's recalculated composite score is less than 1.0, the trigger activates, and financial protection is required
 - If a proprietary institution has a composite score of less than 1.5 and there is a withdrawal of owner's equity, and as a result, the institution's recalculated composite score is less than 1.0, the trigger activates, and financial protection is required



FINANCIAL RESPONSIBILITY - §668.171(c)

MANDATORY TRIGGERS

Examples of a mandatory trigger where the financial composite score is NOT recalculated:

- The institution declares a state of financial exigency to:
 - Federal entity
 - State entity
 - Tribal entity
 - Foreign governmental agency
 - Accrediting agency
- If a proprietary institution fails the 90/10 rule
 - §668.28



FINANCIAL RESPONSIBILITY - §668.171(d)

DISCRETIONARY TRIGGERS

- Examples of a discretionary trigger
 - Discontinuation of educational programs, or closure of locations, that enroll more than 25% of the institution's students who receive Title IV benefits
 - Loss of institutional or program eligibility for another Federal educational assistance program



FINANCIAL RESPONSIBILITY - §668.171(f)

REPORTING REQUIREMENTS

- Triggering events or conditions generally are known first to the institution and must be reported to ED
- Triggers require both the institution and ED to take some action
 - The institution's actions include
 - Reporting the triggering event or condition to ED, as required
 - Providing financial protection, if required
 - ED's actions include
 - Recalculating an institution's financial composite score, if applicable
 - Conducting analysis of a discretionary triggering event
 - Obtaining financial protection, when applicable



FINANCIAL RESPONSIBILITY - §668.171(f)

REPORTING REQUIREMENTS

- Some examples of triggers that require the institution report to ED
 - For certain withdrawals of equity by an owner
 - When the institution subject to certain types of lawsuits
 - For certain creditor events
 - When the institution discontinues educational programs that enroll more than 25% of students at the institution who receive Title IV benefits
- Most reporting requirements must be reported within 21 days of the triggering event or condition
 - In its timely reporting, an institution can demonstrate that the triggering event has been resolved
- Some triggering events do not have a reporting requirement when ED is already aware of the triggering event
 - E.G., high cohort default rates

FINANCIAL RESPONSIBILITY - §668.171(g)

PUBLIC INSTITUTIONS

- Public institutions are not exempt from the financial responsibility rules, however...
 - ED considers a domestic public institution to be financially responsible if the institution notifies us that it
 - Is designated as a public institution by the appropriate government authority, often a state; and
 - Provides a letter or other acceptable documentation signed by an official of that government authority that confirms its public status, and that the institution is backed by the full faith and credit by the appropriate government authority
 - ED will seek this documentation
 - Before the institution's initial certification as a public institution;
 - Upon a change in ownership that includes a request to be recognized as a public institution; or
 - Upon ED's request



FINANCIAL RESPONSIBILITY - §668.176

CHANGE IN OWNERSHIP RULES

- Prior rules for financial responsibility standards used in a change in ownership were financial responsibility standards contained in §668.15
 - That section is eliminated and reserved
- Updated financial responsibility requirements for change in ownership transactions are now contained in §668.176 in Subpart L



FINANCIAL RESPONSIBILITY - §668.176

CHANGE IN OWNERSHIP RULES

- What constitutes a materially complete application as it relates to financial responsibility standards
- Impact of debt obtained as a result of the change in ownership transaction
- Requirements for a temporary provisional program participation agreement



FINANCIAL RESPONSIBILITY

- These revised financial responsibility rules
 - Create an environment where institutions must be financially responsible as they exercise their role as a financial fiduciary of Title IV funds
 - Allow ED to be aware earlier that an institution may have an event, condition or situation that has an adverse impact on the institution's financial condition
 - Allow ED to take necessary actions to protect students' and taxpayers' interests



CERTIFICATION PROCEDURES



CERTIFICATION PROCEDURES - §668.13(b)

REMOVING AUTOMATIC CERTIFICATION

- The provision that automatically grants an institution's renewal of certification if the Secretary does not grant or deny certification within 12 months of the expiration of its current period of participation will be eliminated
- Eliminating this provision would allow the Department to take additional time to investigate institutions thoroughly prior to deciding whether to grant or deny a certification application



CERTIFICATION PROCEDURES - §668.13(c)(1)

ADDITIONAL CIRCUMSTANCES FOR AN INSTITUTION TO BE PROVISIONALLY CERTIFIED

- The Secretary may provisionally certify an institution if it is
 - At risk of closure
 - Under the provisional certification alternative within subpart L (financial responsibility regulations)
- An institution's certification becomes provisional upon notification from the Secretary if
 - The institution triggers one of the financial responsibility events under §668.171(c) or (d) and, as a result, the Secretary requires the institution to post financial protection
 - Any owner or interest holder of the institution with control over that institution, as defined in 34 CFR 600.31, also owns another institution with fines or liabilities owed to the Department and is not making payments in accordance with an agreement to repay that liability

CERTIFICATION PROCEDURES - §668.13(e)

SUPPLEMENTARY PERFORMANCE MEASURES

- Establishes supplementary performance measures the Secretary may consider in determining whether to certify or condition the participation of an institution
 - **Withdrawal rate** - The percentage of students who withdrew from the institution within 100 percent or 150 percent of the published length of the program
 - **Educational and pre-enrollment expenditures** - The amounts the institution spent on instruction and instructional activities, academic support, and support services, compared to the amounts spent on recruiting activities, advertising, and other pre-enrollment expenditures
 - **Licensure pass rate** - If a program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, and the institution is required by an accrediting agency or State to report passage rates for the licensure exam for the program, such passage rates

CERTIFICATION PROCEDURES - §668.14(a)(3)

SIGNATURE REQUIREMENTS FOR PPAs

- Requires direct or indirect owners of proprietary or private nonprofit institutions to sign the PPA
- The Department believes that entities that exert control over institutions should assume responsibility for institutional liabilities



CERTIFICATION PROCEDURES - §668.14(b)(26)

LIMITING EXCESSIVE GE PROGRAM LENGTH

- Limit the number of hours for new entrants in a GE program to the greater of the required minimum number of clock hours, credit hours, or the equivalent required for training in the recognized occupation for which the program prepares students
- Program length is determined in the State where the institution is located or in another State, if the institution certifies that certain criteria applies



CERTIFICATION PROCEDURES - §668.14(b)(26)

USING ANOTHER STATE TO DETERMINE PROGRAM LENGTH

- A majority of students resided in that State while enrolled in the program during the most recently completed award year;
- A majority of students who completed the program in the most recently completed award year were employed in that State; or
- The other State is part of the same metropolitan statistical area as the institution's home State and a majority of students, upon enrollment in the program during the most recently completed award year, stated in writing that they intended to work in that other State

CERTIFICATION PROCEDURES - §668.14(b)(32)

PROGRAMMATIC ACCREDITATION, STATE LICENSURE/CERTIFICATION

- Requires all programs that prepare students for occupations requiring programmatic accreditation or State licensure to meet those requirements for all new entrants upon the effective date of the regulations



CERTIFICATION PROCEDURES - §668.14(b)(32)

STATE LAWS

- Requires institutions to comply with all applicable State laws related to closure, including teach-out plans and agreements, tuition recovery funds, surety bonds, and record retention policies



CERTIFICATION PROCEDURES - §668.14(b)(33)

TRANSCRIPT WITHHOLDING

- Prevents institutions from taking negative action against a student for balances owed due to school error
- Prevents institutions from withholding transcripts for any credits funded in whole or in part with Title IV funds



ADMINISTRATIVE CAPABILITY



ADMINISTRATIVE CAPABILITY - §668.16

- Standards of Administrative Capability
 - To participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is capable of administering that program under each of the standards
 - The Department strengthened institutional requirements to improve the administration of the Title IV programs and address areas of concern that were previously unregulated
 - The Department amended 3 of the existing administrative capability standards, and added 6 new standards to the administrative capability regulations



ADMINISTRATIVE CAPABILITY - §668.16 (h)(k)&(p)

- Amended Standards –
 - **Financial Aid Communications** – requires institutions to provide adequate financial aid counseling that includes more information
 - **Debarment or Suspension** – prohibits an institution from having any principal or affiliate that has been subject to specified negative actions
 - **High School Diploma** – strengthens the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma.



ADMINISTRATIVE CAPABILITY - §668.16(n)

- New Standards of Administrative Capability- Negative Actions
 - Requires that an institution has not been subject to a significant negative action or a finding by a State or Federal agency, a court, or an accrediting agency, where the basis of the action or finding is repeated or unresolved
 - Requires that the institution has not lost eligibility to participate in another Federal educational assistance program due to an administrative action against the institution



ADMINISTRATIVE CAPABILITY - §668.16(q)

- New Standards of Administrative Capability-Career Services
 - Added to require that institutions provide adequate career services to eligible students
 - The Department considers:
 - Number of students enrolled in programs designed to prepare students for gainful employment
 - Number of career services staff
 - Career services promised to students by institutions
 - Institutional partnerships with recruiters and employers

FINANCIAL RESPONSIBILITY – §668.171(f) REPORTING REQUIREMENTS

- Triggering events or conditions are generally known first to the institution and must be reported to ED
- Triggers require both the institution and ED to take some action
 - The institution's actions include
 - Reporting the triggering event or condition to ED, as required
 - Providing financial protection, if required
 - ED's actions include
 - Recalculating an institution's financial composite score, if applicable
 - Conducting analysis of a discretionary triggering event
 - Obtaining financial protection, when applicable



ADMINISTRATIVE CAPABILITY - §668.16(r)

- New Standards of Administrative Capability-Externships
 - Requires that an institution provide students with geographically accessible clinical or externship opportunities when such externship or clinical experience is required
 - For completion of the academic credential
 - or
 - For licensure in a recognized occupation
 - Externship must be related to the credential and/or license being sought
 - Must be provided within 45 days of the completion of regular coursework



ADMINISTRATIVE CAPABILITY - §668.16(s)

- New Standards of Administrative Capability-Disbursing Funds
 - Requires that an institution disburse funds to students in a timely manner that would best meet the students' needs
 - Some examples of what ED would consider not meeting students' needs
 - Multiple valid and relevant complaints regarding disbursements
 - High rates of withdrawals attributable to delays in disbursements
 - Delaying disbursements until after the point at which students earn 100% of their Title IV benefit
 - Delaying disbursements to ensure the institution passes the 90/10 rule, if applicable



ADMINISTRATIVE CAPABILITY - §668.16(t)

- New Standards of Administrative Capability-Gainful Employment
 - Requires institutions that offer GE programs to have less than half of their total Title IV revenue comes from GE programs that are failing under subpart S
 - In other words, if 50% or more of an institution's Title IV revenue comes from failing GE programs, it is an indicator of impaired Administrative Capability
 - Other sanctions and consequences may apply*



*For information on the GE Final Rules, see Breakout Session #6

ADMINISTRATIVE CAPABILITY - §668.16(u)

- New Standards of Administrative Capability-Misrepresentation
 - Prohibits an institution from engaging in misrepresentation, aggressive and deceptive recruitment tactics, or conduct
 - Misrepresentation is defined in subpart F
 - Any false erroneous or misleading statement
 - Aggressive and deceptive recruitment tactics or conduct is defined in subpart R and include, but are not limited to:
 - Demand or pressure the student to make enrollment or loan related decisions immediately
 - Take unreasonable advantage of a student's lack of knowledge with postsecondary institutions or programs
 - Discourage the student from consulting an adviser or family member prior to making an enrollment or loan related decision
 - Use threatening or abusive language with the student
 - Engaging in repeated unsolicited contact for purposes of enrolling after the student has requested to not be contacted

ABILITY TO BENEFIT (ATB)

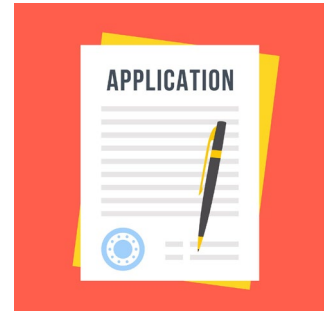


ATB STUDENT ELIGIBILITY - §668.32

- A student that does not have a high school diploma or its recognized equivalent (e.g., a GED certificate) can receive Title IV aid if they fulfill one of the three ATB alternatives **and** enroll in an eligible career pathway program (ECPP)
- ATB Alternatives
 - Successfully passing an ED approved ATB Test
 - Completing 6 credits or 225 clock hours without the use of Title IV aid
 - Enrolling in an ECPP through an approved State process
- Until July 1, 2024, the Department will continue implementing the ATB/ECPP requirements in
 - DCL GEN 12-09;
 - DCL GEN 15-09; and
 - DCL 16-09

ATB - §§668.156 & 157

- Post July 1, 2024 ED will amend the State Process alternative under 668.156
 - There will be an initial application that prohibits institutions with high withdrawal rates from participating in the State process and caps the number of students that can enroll in the State process only for the first two years
 - There will be a subsequent application (after two years) that will require an outcome metric (success rate) to be calculated for each institution that participates in the State process and allows the Secretary to reduce the 85% threshold for the success rate due to certain specific circumstances
 - The success rate is a comparison between all HS graduates and all non-HS graduates that establish Title IV eligibility through the State process at a participating institution
 - Both the initial and subsequent applications will require more reporting for ED to analyze trends in ATB/ECPPs



ATB - §§668.156 & 157

After July 1, 2024, ED will require documentation to substantiate ECPPs that a school offers:

- The regulations will require the Department to approve at least one ECPP at every school that offers an ECPP (with the option to approve more) based on the new documentation standards
- Among the standards are:
 - A government report identifying the need for the ECPP in context of the State or regional economy, and
 - Documentation that program has both a secondary and postsecondary component - the secondary component must be designed to lead to a high school diploma or its recognized equivalent



REGULATORY PACKAGE

- Published by the master calendar deadline
- Effective on July 1, 2024
- Will provide ED with enhanced tools to assist in making determinations about institutions administering the federal student aid programs
- Ensure students' and taxpayers' interests are better served

