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Part IX

Department of Education

34 CFR Chapter VI
Federal Student Assistance Programs;
Improved Oversight; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Chapter VI****Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended****AGENCY:** Department of Education.**ACTION:** Advance notice of proposed rulemaking.

SUMMARY: The Secretary invites comments on the Department of Education's proposal for improved oversight of the student aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). An early draft of the proposal was posted on the World Wide Web on December 6, 1995. The Secretary particularly invites comments on the Department's plans to provide regulatory relief to institutions of higher education that have consistently demonstrated a very high level of performance in administering Title IV programs and strong financial responsibility.

The Secretary intends to develop a notice of proposed rulemaking, with an opportunity for further public comment, to implement parts of the draft proposal after considering the comments received in response to this advance notice. Other parts of the proposal may be implemented through administrative actions by the Department. Still others may require statutory changes.

DATES: Comments may be submitted until March 4, 1996.**ADDRESSES:** Adam Ochlis, U.S. Department of Education, 600 Independence Avenue, SW (Room 4050, ROB-3), Washington, DC 20202 or, by e-mail, adam_ochlis@ed.gov**FOR FURTHER INFORMATION CONTACT:** Adam Ochlis, telephone (202) 708-9104. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.**SUPPLEMENTARY INFORMATION:****Background**

The Department of Education has recently undertaken a series of initiatives to simplify regulations and administrative processes for the Federal student aid programs authorized by Title IV of the HEA and to ensure compliance with the requirements of those programs. In an effort to provide regulatory relief, on April 25, 1995, the Secretary invited institutions of higher education to submit proposals to

reinvent the administration of those programs through the use of the experimental sites authority in section 487A(d) of the HEA. 60 FR 20326. In June 1995, the Secretary completed a page-by-page review of all student financial aid regulations to identify those that should be eliminated or improved and reported the results of the review to the President.

On August 8, 1995, the Secretary announced his intention to expand the Quality Assurance Program under section 487A of the HEA by increasing the number of participating institutions and using the experimental sites authority to encourage management innovation. 60 FR 40446.

In late November and early December 1995, the Secretary published several sets of regulations that will (1) reduce administrative and paperwork burdens on schools, students, and their families; (2) strengthen the Department's oversight of the student aid programs by focusing compliance efforts; (3) ensure that better consumer information is disclosed by schools to students and their families; and (4) make further improvements in the William D. Ford Federal Direct Loan Program. The Secretary will also consider whether to develop proposals for statutory amendments to eliminate unnecessary administrative burden.

At the same time, the Department has undertaken management initiatives to ensure that institutions participating in the student aid programs comply with administrative and fiscal requirements. Since January 1993, the Department has terminated the participation of more than 300 institutions—nearly twice the number of the previous seven years combined. The Secretary believes the Department's strengthened enforcement has both deterred unqualified institutions from applying to participate and improved compliance by participating institutions. The Department is developing a risk analysis system and case management techniques to further improve its ability to focus its monitoring and enforcement activities on institutions that pose the greatest risk to Federal funds.

Proposal for Improved Oversight in Federal Student Aid

The draft proposal on which the Secretary invites comments builds upon the Department's actions to date. Under the proposal, the Department would adopt regulations to provide further relief from administrative burden, particularly to institutions that have records of outstanding performance in administering Title IV programs and strong financial responsibility. Because

such regulatory relief would permit a redeployment of resources, the Department would focus its monitoring and oversight activities on institutions that present a high risk to Federal funds. Finally, the Department would work to improve the ability of students to obtain information about the educational programs they are considering for enrollment.

On December 6, 1995, the Department posted the draft proposal on its World Wide Web home page under the subheading of the Office of Postsecondary Education. The Department has also presented the proposal to some national higher education associations and the National Advisory Committee on Institutional Participation and Oversight. Further presentations are planned for the National Advisory Committee on Student Financial Assistance and representatives of institutions, States, accrediting agencies, national higher education associations, and other members of the higher education community.

The Secretary welcomes comments on all aspects of the *Proposal for Improved Oversight in Federal Student Aid*. An updated version of the proposal appears immediately after the questions below. In particular, the Secretary requests comments on the following questions:

1. The proposal states the Department's intention to provide extensive regulatory relief to institutions that have consistently demonstrated outstanding administration of Title IV programs and strong financial responsibility.

(a) What criteria should the Department use to determine that an institution has consistently demonstrated outstanding administration of Title IV programs?

(b) What criteria should the Department use to determine that an institution is financially strong? How should the criteria for financial strength vary by sector (public institutions, private non-profit institutions, and private for-profit institutions)?

2. The proposal suggests examples of areas in which regulatory relief could be provided to institutions with outstanding records in administering Title IV programs and strong financial responsibility. In what other areas could administrative burden on these institutions be eased? How much lead time would institutions need before this relief was provided?

3. How should the Department ensure the continued administrative excellence and financial strength of the institutions that are provided extensive regulatory relief?

4. The proposal cites examples of administrative relief that the Department has provided and will provide to all participating institutions. In what other areas could administrative burden be reduced without statutory change or diminished accountability for Federal funds?

5. The proposal describes the Department's efforts to provide regulatory relief to institutions participating in the Quality Assurance program. Should the Department propose regulations to set eligibility criteria for specific forms of relief related to institutional performance in specific administrative areas?

6. The proposal describes management practices and possible statutory changes that the Department is considering to improve its oversight of institutions that pose a high risk to Federal funds. What other administrative and regulatory measures within current statutory authority should the Department consider to prevent unqualified institutions from participating in Title IV programs in the first instance and to terminate the participation of those that should not continue? What additional statutory changes should the Department consider for these purposes?

7. The proposal describes some characteristics of an institution that might indicate that it should be subjected to greater monitoring and oversight. Are there other indicators (for example, an adverse opinion on a financial statement, or a material finding on a compliance audit) that the Department should consider for this purpose?

8. The proposal describes efforts undertaken by the Department to improve students' access to information about educational programs. What other steps should the Department take to accomplish this objective? Should the Department use such student consumer information about performance, such as completion and graduation rates, in identifying institutions for regulatory relief or for heightened scrutiny?

An updated version of the draft proposal follows.

Proposal for Improved Oversight in Federal Student Aid (Draft—Updated January 1996)

The Department of Education is proposing to strengthen and restructure its oversight of institutions that are participating in Title IV student aid programs. Under this proposal, the Department would continue to increase its oversight of institutions that pose significant risks to Federal funds and of new institutions, which may experience

problems in administering Title IV programs. The Department would also provide regulatory relief to institutions that have consistently demonstrated a very high level of performance in administering Title IV programs and strong financial responsibility. Because increased regulatory relief would reduce the Departmental resources needed to monitor institutions that pose little risk to Federal funds, the Department could concentrate its monitoring resources on institutions that pose greater risk. This proposal builds upon regulatory relief initiatives and efforts to strengthen the monitoring and oversight of at-risk institutions that are already underway in the Department.

The Department will use this proposal to advance discussions with Congress and the higher education community on the role of the Federal government in managing Title IV programs and providing better information to students. The Department requests comments and suggestions on this proposal and other ideas for improving the system of oversight of Federal student aid programs. The Department will work closely with the higher education community to develop the specifics of the proposal, including administrative and financial performance criteria to identify institutions eligible for regulatory relief and institutions needing increased oversight and support.

Regulatory Relief

Under the proposal, the Department would engage in regulatory relief on two levels. First, the Department would continue to reinvent its regulations to reduce administrative and paperwork burden on all institutions where overly restrictive requirements do not improve accountability or protect the Federal fiscal interest. The Department has already streamlined the recertification application and revised the FAFSA form to include all statutorily-required student certifications that were previously on separate forms. The Department is also developing a less complex refund policy for all institutions; ultimately, statutory changes would be necessary to simplify the refund policy to the extent desired.

Second, under this proposal, institutions that have consistently demonstrated outstanding administration of Title IV programs and strong financial responsibility would be eligible for additional regulatory relief. The Department would use its experimental sites authority to provide this flexibility.

Possible criteria for determining that an institution has demonstrated

outstanding administration of Title IV programs could include—

- An unqualified opinion on financial statements;
- No material findings in compliance audits for the previous five years;
- Demonstrably sound internal controls (such as accounting, financial, and internal management controls);
- Low default rates (adjustments would be made for institutions with a small percentage of students borrowing);
- A history of successful participation in Title IV programs, as indicated by such factors as the duration and extent of participation in different kinds of Title IV programs (such as the student loan, Pell grant, and campus-based programs) and the quality of administrative performance in those programs;
- Full unqualified certification; and
- No adverse actions by accrediting agencies during the institution's last two full accreditation reviews.

To assess financial responsibility, the Department would develop different financial responsibility standards for different sectors. Because different accounting standards are applicable to different sectors, financial statements are not consistent across sectors. The Department would develop financial indicators that, although different, nevertheless measure financial health across all three sectors.

Institutions that met the criteria for strong administrative and financial performance would be eligible for such regulatory relief as less frequent recertification, less frequent submission of compliance audits, and exemption from certain regulatory requirements (such as those relating to multiple and delayed disbursement, verification, and entrance and exit counseling). A significant percentage of the departmental resources currently used to oversee and monitor the requirements for strong institutions would be used to focus more resources on at-risk institutions.

Institutions that did not meet all the criteria for strong Title IV administrative and financial performance would still be able to apply for selective regulatory relief. The Department is already providing regulatory relief on a case-by-case basis to a large number of institutions under the April 25, 1995 experimental sites initiative referred to earlier in this notice. Under the August 8, 1995 Quality Assurance Program initiative, also referred to earlier, participating institutions may request specific regulatory relief on the basis of their improved administrative capability.

Increased Monitoring and Oversight of At-Risk Institutions

Under the proposal, the Department would increase monitoring and oversight of at-risk institutions. At-risk institutions might include those subjected to a limitation, suspension, or termination action in the previous several years; those on provisional certification (including all new institutions); those on reimbursement; or those subject to termination because of high default rates (including institutions appealing these rates). At-risk institutions would be subject to the full set of Department regulations and increased oversight and would receive increased technical assistance from the Department. Examples of increased regulation and oversight for at-risk institutions that the Department could implement through changes in administrative practices include—

- At-risk institutions would face a higher probability of intensive program reviews by the Department;
- At-risk institutions with a history of deficiencies would be subject to termination actions by the Department unless they improved their performance in the administration of Title IV programs to adequate levels within specific time frames;
- At-risk institutions that had two or three major program review findings, such as failure to implement satisfactory progress standards or failure to adhere to the refund policy, would be terminated from participation in all Title IV programs; and
- New institutions that did not demonstrate good performance would remain on provisional certification for five years rather than for three years, as is currently required.

Some changes could be effected only by statutory amendments. Possible statutory changes that the Department is considering include—

- Requiring a personal financial guarantee against liabilities from the owner of any proprietary institution placed on provisional certification and holding individuals with financial authority and responsibility at proprietary institutions personally liable for an institution's unpaid refunds;
- Holding institutions that unsuccessfully appeal high default rates liable for the default costs and subsidies that are paid by the Department on loans to that school during the appeal process. The Department could also require a school that chooses to receive loans during the appeal process to post surety in an amount sufficient to cover these costs;
- Extending to all non-degree vocational programs the current

requirement that short-term vocational programs graduate and place 70 percent of their students; and

- Permitting the Department to establish a new expiration date for a Program Participation Agreement for at-risk institutions and thus require a full application for recertification and enable the Department to make decisions based on current information.

The Department is developing the administrative and information systems needed to carry out the improved oversight of at-risk institutions. These will include a system of risk analysis incorporating a variety of factors (for example, high default rates and material findings in compliance audits or program reviews) that will help identify administrative and financial problems. The risk analysis system will enable the Department to improve its targeting of institutions for compliance reviews based on administrative and financial performance and concentrate resources on institutions with potentially serious problems. Making this system viable will require improvement of information in the Department's databases such as the National Student Loan Data System, the full development of the Postsecondary Education Participants System, and the development of good tracking systems. The Department is taking steps to increase data integrity and is committed to providing the systems required.

To improve its oversight of at-risk institutions, the Department is moving toward a new approach for monitoring institutional performance in Title IV programs. Currently, the Department reviews institutional performance through four largely independent processes—recertification, analysis of financial statements, review of compliance audits, and program review. While recertification requires some cross-analysis of these different areas, the system does not otherwise facilitate decisions based on all the information the Department has concerning an institution. The new system will consolidate these processes as much as possible by using case management as the core process. This will allow decision-making based on all information concerning a school that may be relevant to Title IV compliance, including information supplied by outside entities such as accrediting agencies.

Student Information

The improved oversight system would also ensure that institutions provide better information about educational programs for students to use in making informed decisions about where to

enroll. This information would help ensure that market forces work better to eliminate inadequate institutions and programs from participation in Title IV programs and help students make better decisions.

Under the Student Right to Know Act, all institutions must make their completion and graduation rates available in their catalogs or other material readily available to all prospective students who request this information. The provision of this information should allow a prospective student to consider the likelihood of completing the program at an institution, the potential benefit to be derived from investing the required time and money in that program, and similar information about programs at other institutions. Final regulations to implement the Student Right to Know Act were published on December 1, 1995. 60 FR 61776. These regulations require institutions to begin disclosing completion and graduation rates for students who enter the institution after July 1, 1996. Completion and graduation rates will be calculated for full-time, undergraduate certificate- or degree-seeking students.

In addition to information required under the Student Right to Know Act, the Administration has proposed legislation that would require institutions that offer non-degree programs to report information about these programs and information on the outcomes of previous students to one-stop career centers that would provide this information to prospective students. This information could include completion rates, placement rates, licensure exam pass rates, or the percentage of graduates that meet certain skill standards. Although the specific provisions included in the Administration bill were not passed, the two versions of the job training bill being discussed by the Congress in late January included related provisions.

The Department will continue to develop and support legislation and efforts to improve information for students and families on the outcomes of both degree and non-degree programs at institutions participating in the Title IV student aid programs. The Department plans to continue this focus in specific proposals included in the next reauthorization of the HEA.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this draft proposal. Comments will be available for public inspection, during and after the comment period, in Room 4050, Regional Office Building 3,

7th and D Streets, SW., Washington, DC,
between the hours of 8:30 a.m. and 4
p.m., Monday through Friday of each
week except Federal holidays.

Dated: January 29, 1996.

Richard W. Riley,
Secretary of Education.

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