



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 2: Standards of Administrative Capability
Session 1: January 18-21, 2022

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

Summary of issues:

The statute requires that institutions of higher education (institutions) be administratively capable in order to retain eligibility for Title IV federal financial aid. However, while current administrative capability regulations include a host of requirements, the Department is aware of some compliance concerns and activities that are not reflected in those rules. Accordingly, we propose to revise the administrative capability regulations.

Proposal:

We propose to include several additional standards in the administrative capability rules to ensure that they provide the capacity for appropriate response to ongoing problems the Department observes within institutions.

The additional proposed administrative capability standards would require an institution to:

- 1. Provide adequate career services to eligible students who receive Title IV, HEA program assistance.** Determination of adequacy would be made based on the share of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation, the number and distribution of career services staff, and the presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution. It is important that institutions help students identify career opportunities and access well-paying jobs after completing their programs; however, some institutions do not provide adequate support. Thus, the Department proposes to establish these requirements for adequate career services.
- 2. Make a reasonable effort to provide students with clinical or externship opportunities required for completion of a credential or licensure in the recognized occupation,** as applicable, within 45 days after the completion of required coursework. Although many recognized occupations require the completion of clinicals or externships, some institutions do not make adequate arrangements broadly accessible to students, even when these are required to earn a degree or certificate. Thus, students may be left to identify their own externships, are only offered externships that are geographically distant and/or do not meet the credential or licensure requirements, or, in some cases, are not provided with any externship opportunities for extended periods of time.
- 3. Disburse funds to students in a timely manner consistent with the students' needs.** Some institutions substantially delay disbursements to students. In some cases, this results in students

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not receiving funding until long after tuition payments are due and living costs are incurred, which may affect students' ability to remain in school, and ultimately graduate. Thus, the Department proposes that an institution shall not be considered administratively capable if the Secretary determines that it failed to make timely disbursements in ways that "best meet the student's needs," as is already required for delaying disbursements under the Pell, SEOG, and TEACH Grant programs (34 CFR 690.76(a), 676.16(a)(3), and 686.33(a)). Violations may be determined based on student complaints, high rates of withdrawals attributable to delays in disbursements, disbursements being delayed until after the withdrawal date requirements established in 34 CFR 668.22(b) and (c), disbursements being delayed with the effect of ensuring an institution passes the 90/10 ratio, or other information available to the Secretary.

4. **Not engage in misrepresentations as defined in 34 CFR Subpart F or aggressive recruitment as defined in proposed 34 CFR Subpart [R].** Because both misrepresentation and aggressive recruitment increase risk to students and taxpayers, particularly with respect to borrower defense claims, the Department proposed in recent negotiations to further define each of these terms, and we propose to incorporate them as a requirement prohibited into the standards of administrative capability.
5. **Develop and follow procedures to evaluate the validity of a student's high school completion,** including the collection and maintenance of appropriate documentation of such completion. While institutions are currently required to verify high school completion status for students they suspect may not have the appropriate credential, some institutions have avoided verifying high school completion even when they had suspicions and the Department later determined the student did not have the appropriate credentials. The Department proposes to strengthen this requirement by specifying the types of documentation that will be required.

Proposed Regulations Redline

§ 668.16 Standards of administrative capability.

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

* * *

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

(1) The source and amount of each type of aid offered;

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

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

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~~(i) Provides adequate, the entire range of any career services it has publicized through direct or indirect means to eligible students who received Title IV, HEA program assistance in enrollment periods that such services were publicized. In determining whether an institution provides adequate the career services it has publicized, the Secretary may considers –~~

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~~(1) All institutional advertising, the contents of printed and web-based promotions, recordings of recruitment and admissions telephone conversations, the institution's website and bulletin, any representations about partnerships with employers, and any other evidence of career-related representations regarding placement of its graduates and the nature, duration, and quality of its career advising and career services to its students,~~

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~~(1)(2) The share placement of students enrolled in programs designed to prepare students for gainful employment in a recognized occupation; and~~

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~~(2)(3) The number and distribution of career services staff; and~~

~~(3)(4) The presence of institutional partnerships with recruiters and employers who regularly hire graduates of the institution.~~

~~(j) Makes a reasonable effort to provide all students who graduate with the appropriate clinical or externship opportunities required for completion of the credential or licensure in a recognized occupation within 45 days of the completion of required coursework.~~

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~~(k) Disburses funds to students in a timely manner consistent with the student's students' needs, violations of which may be assessed using student complaints, high rates of withdrawals attributable to delays in disbursements, disbursements delayed until after the withdrawal date requirements in 34 CFR 668.22(b) and (c), disbursements delayed with the effect of ensuring an institution passes the 90/10 ratio, or other methods.~~

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

~~(m) Does not engage in misrepresentations as defined in subpart F of this part or aggressive recruitment as defined in subpart R of this part.~~

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

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

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

~~(ko) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485) that is -~~

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

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

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~~(2)~~(3) A former director, officer, executive, or principal of an institution whose misconduct or closure resulted in losses to the federal government in excess of 5 percent of its student aid volume during the period in which such losses originated.

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(4p) For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period -

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- (1)** Withdrew from, dropped out of, or were expelled from the institution;
- (2)** Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

(g)

- (1)** Has a cohort default rate -

- (i)** That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;
- (ii)** On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and
- (iii)** As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

- (2)**

(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or 668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

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

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

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

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

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

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the

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Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

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

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

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

~~(o)~~ Participates in the electronic processes that the Secretary -

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

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

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

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

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

~~(A) Transcripts Evidence of accreditation by a recognized authority;~~

~~(B) Written descriptions of course requirements Evidence that the high school meets the requirements established by the appropriate State or local education agency that regulates and oversees secondary education; or~~

~~(C) Written and signed statements by principals or executive officers at the high school attesting to the rigor and quality of coursework at the high school Evidence that the school has a sufficient number of qualified faculty, that it offers a general high school curriculum and actual instruction commensurable with the curriculum it offers, and that it it conducts regular assessments as a condition of grade-level advancement and graduation. ; and~~

~~(ii) If the high school is regulated or overseen by a State agency, confirming with or receiving documentation from that agency that the high school is recognized or meets requirements established by that agency Such additional efforts by the institution as may be necessary to to establish the legitimacy of the high school in question if there are press reports, credible allegations, or circumstances that would reasonably cast doubt on the entity's representation of itself as a high school; ;~~

~~(iii) --~~

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

~~(i) Is not recognized or does not meet the requirements established by the appropriate State or local education agency in the jurisdiction which where the high school is located;~~

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

(iii)(iii) Was granted by an unaccredited private high school with a financial relationship with the institution or its affiliates; or

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

(iii)(3) If there are any reasons to doubt the validity of a high school diploma from a legitimate high school, the institution must obtain an official transcript as a condition of enrollment.

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