

Fact Sheet: Protecting Students Through Final Regulations That Strengthen Department of Education Oversight and Monitoring of Colleges and Universities

Today, the Biden-Harris Administration released final rules to significantly strengthen monitoring and oversight of institutions of higher education (institutions) and strengthen consumer protection for student borrowers. These regulations will allow the Department of Education (Department) to better protect taxpayers from the negative effects of sudden college closures, will restrict colleges from withholding course credits paid for with Federal money from students' transcripts, and require colleges to clearly communicate to students how much financial aid they will receive—a common source of confusion and error. The regulations also provide a more streamlined process for States to approve postsecondary opportunities for students without a high school diploma or its equivalent. These regulations will go into effect on July 1, 2024.

Financial Responsibility

College closures and institutional financial instability create significant costs for students and taxpayers. Studies by the [U.S. Government Accountability Office](#) and the [State Higher Education Executive Officers Association](#) show that institutional closures are disruptive for students, often putting an end to their educational journeys, and that closures often involve insufficient notice to and protections for students. Closures also frequently result in significant losses of taxpayer funds to cover the cost of loan discharges that are not reimbursed by the institution. For instance, Department data show that, from 2013-2022, there was more than \$1.6 billion in liabilities established from institutions but only \$344 million collected from institutions during that time period.

The final rules give the Department the ability to act more swiftly to protect taxpayers from potential losses when institutions show warning signs. This approach will also dissuade institutions from engaging in risky behavior in the first place. The rules do this by outlining certain mandatory triggering events that will result in requests for a letter of credit or other forms of financial protection from institutions be submitted to the Department. These events include when institutions:

- Have a failing financial responsibility composite score because they are required to pay a debt or other liability or are subject to a lawsuit by Federal or State actors.
- Are at risk of losing access to Federal aid due to having high cohort default rates, failing the 90/10 revenue requirement, or having a significant share of aid in failing gainful employment programs.
- Take steps to manipulate their composite score or discourage Department oversight by making a contribution to the school that results in a passing score and then making a distribution after the fiscal year ends; or enter into debt covenants that could cause

adverse conditions if the Department places limitations on the institution's access to Federal financial aid.

- Declare financial exigency or enter a receivership.

The final rules also include several discretionary triggers that could result in a requirement to provide financial protection based upon a case-by-case determination. These discretionary triggers include some that were listed as mandatory triggers in the proposed rule. Some of the discretionary triggers would apply to institutions that are:

- Subject to adverse accreditor actions, such as a show cause order or probation.
- Experiencing significant fluctuations in Federal student aid volume.
- Closing programs or locations that enroll significant shares of students.
- Subject to adverse actions by States and other Federal agencies.

Institutions will have 21 days to report triggering events, up from 10 days in the proposed rule. As part of this reporting, institutions could also show that a mandatory triggering event has been resolved.

Beyond the triggering events, the regulations also adopt a more streamlined approach for when the Department will seek proof that a public institution has full faith and credit backing by its State. The Department will request such documentation when a school first seeks to participate as a public college or after a conversion.

Administrative Capability

The final rules strengthen how the Department administers the statutory requirement that institutions must demonstrate that they are capable of administering the Title IV programs. Institutions that are reviewed and found not to be administratively capable may be required to provide financial protection or have their participation in the Federal student aid programs limited, suspended, or terminated.

The final rules:

- Require that institutions provide adequate financial aid counseling and financial aid communications to students, including information on the cost of attendance and the sources and types of financial aid available to them.
- Limit an institution from having a principal or affiliate whose misconduct or institutional closure contributed to significant liabilities to the Federal government.
- Require institutions to provide, within 45 days of the student finishing necessary coursework, geographically accessible clinical or externship options that are required prior to the completion of a program. Geographic accessibility will be considered based upon what a student could reasonably expect given the level of the program and specificity of the externship or clinical experience needed. This does not apply to clinical experiences that occur after graduation, such as medical residencies.

- Strengthen requirements that institutions develop and follow adequate procedures to evaluate the validity of a student’s high school diploma. This provision was simplified from the proposed rule to eliminate language that would require an institution to verify the validity of a high school diploma in a student’s home State for students learning online and language addressing when a diploma is provided by an entity with a business relationship to the institution. These changes will make the requirement clearer and easier to administer.
- Require institutions to provide adequate career services.

Certification Procedures

These rules govern the agreements institutions sign with the Department to participate in its financial aid programs. The final regulations strengthen the Department’s ability to increase scrutiny of institutions that exhibit concerning signs and allow us to impose conditions to mitigate the risk posed to students and taxpayers. They also add conditions that institutions will agree to when signing these agreements. The provisions in the final rule include:

- Allowing the Department to request teach-out plans or agreements from provisionally certified institutions that are at risk of closure.
- Requiring entities with direct or indirect ownership of a proprietary or private nonprofit institution sign the institution’s Program Participation Agreement. This expands on guidance issued by the Department last year on when it will seek these signatures on a case-by-case basis.
- Limiting career training programs to no more than 100 percent of the length mandated by the State for certification or licensure. The final rule clarifies that this applies only to new programs as of July 1, 2024, excludes fully online programs, and does not apply to State requirements for degree programs.
- Requiring all programs to show that they meet any required programmatic accreditation and State licensure requirements so that students can obtain employment, if the State has them. The final rules clarify that this applies only to new programs as of July 1, 2024, give institutions an option to show that they meet requirements in a State where a student attests they intend to move, and clarify that programs that lead to provisional licensure or licensure through reciprocity agreements would meet this requirement.
- Protecting students from the effects of closures by requiring distance education providers to comply with State laws related to closure in any State where they serve students. This includes requirements related to teach-outs, record retention, tuition recovery funds, and surety bonds. The final rule removes provisions in the proposed rule that would also have covered State laws specifically related to misrepresentation and recruitment at postsecondary institutions because we believe those items are covered by generally applicable laws against unfair and deceptive acts or practices.
- Preventing institutions from withholding transcripts for credits paid for with Title IV aid. The final rule removed a provision related to return of title IV funds.

Ability to Benefit

The Higher Education Act establishes three “ability to benefit” (ATB) alternatives that a student without a high school diploma may pursue to access Federal financial aid, including participating in a State process approved by the Department. ATB students are required to enroll in an eligible career pathway program to access Federal student aid.

The final ATB regulations establish safeguards to ensure State processes are adequate and establish reporting requirements for institutions participating in the State process. The regulations also define an eligible career pathway program (ECPP) and set clear documentation standards for institutions to demonstrate compliance. The final rule generally follows the proposed rule, which was agreed to by consensus by non-Federal negotiators. However, the Department simplified the process for approving ECPPs to focus on approving at least one ECPP per institution, with the option for additional approval of more ECPPs if there are concerns. The proposed rule would have required Department approval of all ECPPs.