

## SESSION 4

### PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

#### Subpart A—General

##### §668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) As used in this part, an "institution" unless otherwise specified, includes—

- (1) An institution of higher education as defined in 34 CFR 600.4;
- (2) A proprietary institution of higher education as defined in 34 CFR 600.5; and
- (3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

- (1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR part 690);
- (2) The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a-1; 34 CFR part 691);
- (3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR parts 673 and 676);
- (4) The Leveraging Educational Assistance Partnership (LEAP) Program (20 U.S.C. 1070c *et seq.*; 34 CFR part 692);
- (5) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.*; 34 CFR part 682);
- (6) The Federal PLUS Program (20 U.S.C. 1078-2; 34 CFR part 682);
- (7) The Federal Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR part 682);
- (8) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR parts 673 and 675);
- (9) The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685);

[14/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(10) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.*; 34 CFR parts 673 and 674);

(11) The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a-1; 34 CFR part 691); and

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

(Authority: 20 U.S.C. 1070 *et seq.*)

[52 FR 45724, Dec. 1, 1987, as amended at 56 FR 36696, July 31, 1991; 59 FR 22418, Apr. 29, 1994; 61 FR 60396, Nov. 27, 1996; 63 FR 40623, July 29, 1998; 65 FR 38729, June 22, 2000; 71 FR 38002, July 3, 2006; 73 FR 35492, June 23, 2008]

### §668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Award year

Branch campus

Clock hour

Correspondence course

Credit hour

[Direct assessment program](#)

[Distance education](#)

Educational program

Eligible institution

Federal Family Education Loan (FFEL) programs

Foreign institution

Incarcerated student

Institution of higher education

Legally authorized

Nationally recognized accrediting agency

Nonprofit institution

[24/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

One-~~academic~~-year training program  
Postsecondary vocational institution  
Preaccredited  
Proprietary institution of higher education  
Recognized equivalent of a high school diploma  
Recognized occupation  
Regular student  
[Religious mission](#)  
Secretary  
State  
~~Telecommunications course~~  
[Teach-out](#)  
[Teach-out agreement](#)  
[Teach-out plan](#)  
[Title IV, HEA program](#)

(b) The following definitions apply to all Title IV, HEA programs:

~~*Academic Competitiveness Grant (ACG) Program:* A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded during the first and second academic years of study to eligible financially needy undergraduate students who successfully complete rigorous secondary school programs of study.~~

~~(Authority: 20 U.S.C. 1070a-1)~~

*Campus-based programs:* (1) The Federal Perkins Loan Program (34 CFR parts 673 and 674);

(2) The Federal Work-Study (FWS) Program (34 CFR parts 673 and 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR parts 673 and 676).

*Defense loan:* A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

[34/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

*Dependent student:* Any student who does not qualify as an independent student (see *Independent student*).

*Designated department official:* An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

*Direct Loan Program loan:* A loan made under the William D. Ford Federal Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

*Direct PLUS Loan:* A loan made under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1078-2 and 1087a *et seq.*)

*Direct Subsidized Loan:* A loan made under the Federal Direct Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

*Direct Unsubsidized Loan:* A loan made under the Federal Direct Unsubsidized Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

*Enrolled:* The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

(Authority: 20 U.S.C. 1088)

*Expected family contribution (EFC):* The amount, as determined under title IV, part F of the HEA, an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

*Federal Consolidation Loan program:* The loan program authorized by Title IV-B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal Consolidation Loan, Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for Federal PLUS borrowers whose loans were made after October 17, 1986,

[44/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078-3)

*Federal Direct PLUS Program:* A loan program authorized by title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 10782 and 1087a *et seq.*)

*Federal Direct Stafford/Ford Loan Program:* A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

*Federal Direct Unsubsidized Stafford/Ford Loan Program:* A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Unsubsidized Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 1087a *et seq.*)

*Federal Pell Grant Program:* A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

*Federal Perkins loan:* A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

*Federal Perkins Loan program:* The student loan program authorized by Title IV-E of the HEA after October 16, 1986. Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

(Authority: 20 U.S.C. 1087aa-1087ii)

[54/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

*Federal PLUS loan:* A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078-2)

*Federal PLUS program:* The loan program authorized by Title IV-B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. Beginning July 1, 2006, the PLUS Program provides for making loans to graduate and professional students.

(Authority: 20 U.S.C. 1078-2)

*Federal SLS loan:* A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078-1)

*Federal Stafford loan:* A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

*Federal Stafford Loan program:* The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

*Federal Supplemental Educational Opportunity Grant (FSEOG) program:* The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

*Federal Supplemental Loans for Students (Federal SLS) Program:* The loan program authorized by Title IV-B, section 428A of the HEA, as in effect for periods of enrollment that began before July 1, 1994. The Federal SLS Program encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078-1)

*Federal Work Study (FWS) program:* The part-time employment program for students authorized by Title IV-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

*FFELP loan:* A loan made under the FFEL programs.

[6/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(Authority: 20 U.S.C. 1071 *et seq.*)

*Free application for Federal student aid (FAFSA):* The student aid application provided for under section 483 of the HEA, which is used to determine an applicant's eligibility for the title IV, HEA programs.

*Full-time student:* An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program that is not subscription-based, the student's workload may include repeating any coursework previously taken in the program ~~but~~; however, the workload may not include more than one repetition of a previously passed course. ~~However, for~~For an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements, based on the type of program:

- (1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.
- (2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.
- (3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters, or quarters) the number of credits determined by—
  - (i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and
  - (ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.
- (4) For a program that measures progress in clock hours, 24 clock hours per week.
- (5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.
- (6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.
- (7) For correspondence coursework, a full-time course load must be—
  - (i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and
  - (ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

[7/4/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(8) For a subscription-based program, completion of a full-time course load commensurate with the full-time definitions listed in paragraphs (1), (3), and (5) through (7) of this definition.

(Authority: 20 U.S.C. 1082 and 1088)

*Graduate or professional student:* A student who—

- (1) Is not receiving title IV aid as an undergraduate student for the same period of enrollment;
- (2) Is enrolled in a program or course above the baccalaureate level or is enrolled in a program leading to a professional degree; and
- (3) Has completed the equivalent of at least three years of full-time study either prior to entrance into the program or as part of the program itself.

(Authority: 20 U.S.C. 1082 and 1088)

*Half-time student:* (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic workload, as determined by the institution, that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a workload of at least 12 hours of work per week, or is earning at least six credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

(Authority: 20 U.S.C. 1082 and 1088)

*Independent student:* A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

*Initiating official:* The designated department official authorized to begin an emergency action under 34 CFR 668.83.

*Institutional student information record (ISIR):* An electronic record that the Secretary transmits to an institution that includes an applicant's—

- (1) FAFSA information; and
- (2) EFC.

*Leveraging Educational Assistance Partnership (LEAP) Program:* The grant program authorized by Title IV-A-4 of the HEA.

[84/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)



## SESSION 4

*National Defense Student Loan program:* The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

*National Direct Student Loan (NDSL) program:* The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

*National Early Intervention Scholarship and Partnership (NEISP) program:* The scholarship program authorized by Chapter 2 of subpart 1 of Title IV-A of the HEA.

(Authority: 20 U.S.C. 1070a-21 *et seq.*)

*National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program:* A grant program authorized by Title IV-A-1 of the HEA under which grants are awarded during the third and fourth academic years of study to eligible financially needy undergraduate students pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering, or foreign languages determined to be critical to the national security of the United States.

(Authority: 20 U.S.C. 1070a-1)

*One-third of an academic year:* A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under §668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

(Authority: 20 U.S.C. 1088)

*Output document:* The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

*Parent:* A student's biological or adoptive mother or father or the student's stepparent, if the biological parent or adoptive mother or father has remarried at the time of application.

*Participating institution:* An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

[9/4/2019 5:59 PM](#) [4/3/2019 10:56 AM](#) [4/3/2019 8:15 AM](#) [4/2/2019 6:47 PM](#) [4/2/2019 2:28 PM](#) [3/31/2019 1:34 PM](#) [3/30/2019 5:54 PM](#)

## SESSION 4

*Professional degree:* A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

(Authority: 20 U.S.C. 1082 and 1088)

*Show-cause official:* The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83.

(Authority: 20 U.S.C. 1070c *et seq.*)

*Subscription-based program:* A standard or nonstandard term direct assessment program in which the institution charges a student for each term on a subscription basis with the expectation that the student completes a specified number of credit hours during that term. Coursework in a subscription-based program is not required to begin or end within a specific timeframe in each term. Students in subscription-based programs must complete a cumulative number of credit hours (or the equivalent) during or following the end of each term before receiving subsequent disbursements of Title IV, HEA program funds. An institution establishes an enrollment status (for example, full-time or half-time) that will apply to a student throughout the student's enrollment in the program, except that a student may change his or her enrollment status no more often than once per academic year. The number of credit hours (or the equivalent) a student must complete before receiving subsequent disbursements is calculated by—

(1) Determining for each term the number of credit hours (or the equivalent) associated with the institution's minimum standard for the student's enrollment status (for example, full-time, three-quarter time, or half-time) for that period commensurate with paragraph (8) in the definition of full-time student, adjusted for less than full-time students in light of the definitions of half-time student and three-quarter-time students, and adjusted to at least one credit (or the equivalent) for a student who is enrolled less than half time; and

(2) Adding together the number of credit hours (or the equivalent) determined under paragraph (1) for each term in which the student was enrolled in and attended that program, excluding the current and most recently attended terms.

*Student aid report (SAR):* A report provided to an applicant by the Secretary showing his or her FAFSA information and the amount of his or her EFC.

*Teacher Education Assistance for College and Higher Education (TEACH) Grant Program:* A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified teacher in a high-need field in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or

[104/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g)

*TEACH Grant:* A grant authorized under title IV-A-9 of the HEA and awarded to students in exchange for prospective teaching service.

(Authority: 20 U.S.C. 1070g)

*Third-party servicer:* (1) An individual or a State, or a private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(i) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to—

(A) Processing student financial aid applications;

(B) Performing need analysis;

(C) Determining student eligibility and related activities;

~~(D) Certifying loan applications;~~

~~(D) Originating loans;~~

(E) Processing output documents for payment to students;

(F) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(G) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(H) Preparing and certifying requests for advance or reimbursement funding;

(I) Loan servicing and collection;

(J) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(K) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

[11/4/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(ii) Exclude the following functions—

- (A) Publishing ability-to-benefit tests;
- (B) Performing functions as a Multiple Data Entry Processor (MDE);
- (C) Financial and compliance auditing;
- (D) Mailing of documents prepared by the institution;
- (E) Warehousing of records; and
- (F) Providing computer services or software; and

(iii) Notwithstanding the exclusions referred to in paragraph (1)(ii) of this definition, include any activity comprised of any function described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, an employee of an institution is not a third-party servicer. The Secretary considers an individual to be an employee if the individual—

- (i) Works on a full-time, part-time, or temporary basis;
- (ii) Performs all duties on site at the institution under the supervision of the institution;
- (iii) Is paid directly by the institution;
- (iv) Is not employed by or associated with a third-party servicer; and
- (v) Is not a third-party servicer for any other institution.

(Authority: 20 U.S.C. 1088)

*Three-quarter time student:* An enrolled student who is carrying a three-quarter-time academic workload, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

(Authority: 20 U.S.C. 1082 and 1088)

*Two-thirds of an academic year:* A period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under §668.3, two-thirds of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

[12/4/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(Authority: 20 U.S.C. 1088)

*Undergraduate student:* (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four years, or is enrolled in a longer program designed to lead to a degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, National Science and Mathematics Access to Retain Talent (SMART) Grant Program, and TEACH Grant program if the student has not yet earned a baccalaureate or professional degree. However, for purposes of 34 CFR 690.6(c)(5) and 686.3(a) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

(4) A student enrolled in a four to five year program designed to lead to an undergraduate degree. A student enrolled in a program of any other, longer length is considered an undergraduate student for only the first four years of that program.

(Authority: 20 U.S.C. 1070g)

*U.S. citizen or national:* (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

*Valid institutional student information record (valid ISIR):* An ISIR on which all the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

*Valid student aid report (valid SAR):* A student aid report on which all of the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

*William D. Ford Federal Direct Loan (Direct Loan) Program:* The loan program authorized by Title IV, Part D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

[134/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

[59 FR 22418, Apr. 29, 1994]

### **§668.3 Academic year.**

\* \* \*

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which—

(i) At least one day of regularly scheduled instruction or examinations occurs, or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and

(ii) (A) In a program offered using asynchronous coursework through distance education or correspondence courses, the institution makes available the instructional materials, other resources, and instructor-support necessary for academic engagement and completion of course objectives; and

(B) In a program using asynchronous coursework through distance education, the institution expects enrolled students to perform educational activities demonstrating academic engagement during the week.

(3) Instructional time does not include any vacation periods, homework, scheduled breaks, and activities not included in the definition of academic engagement under 34 CFR 600.2, or periods of orientation or counseling.

\* \* \*

### **§668.4 Payment period.**

### **§668.5 Written arrangements to provide educational programs.**

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree ~~or~~ certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if— the educational program offered by the institution that grants the degree, certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8.

14/10/2019 5:59 PM 4/3/2019 10:56 AM 4/3/2019 8:15 AM 4/2/2019 6:47 PM 4/2/2019 2:28 PM 3/31/2019 1:34 PM 3/30/2019 5:54 PM

## SESSION 4

~~(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of §668.8; and~~

~~(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.~~

(b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement under which an institution in another country, or an organization acting on behalf of an institution in another country, provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* ~~If~~ Except as provided in paragraph (d), if an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization—

(i) Demonstrates experience in the delivery and assessment of the program or portion of the program they will be contracted to deliver under the provisions of the written arrangement and that the program has been effective in meeting the stated learning objectives; and

(ii) has not—

~~(A)~~ Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

~~(B)~~ Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

~~(C)~~ Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

~~(D)~~ Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

~~(E)~~ Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

(2) The educational program offered by the institution that grants the degree ~~or~~ certificate, or other recognized educational credential otherwise satisfies the requirements of §668.8; ~~and~~

(3)(i) The ineligible institution or organization provides 25 percent or less of the educational program; or

## SESSION 4

(ii)(A) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the Federal Register in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for executing a written arrangement with an ineligible institution or organization ~~the contracting out of educational services.~~

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section, or provides coursework as provided in paragraph (h)(2), except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in §668.43(a)(12) to enrolled and prospective students.

(f) *Workforce responsiveness.* Nothing in this or any other section shall prohibit an institution utilizing written arrangements from aligning or modifying their curriculum or academic requirements in order to meet the recommendations or requirements of industry advisory boards that include employers who hire program graduates, widely recognized industry standards and organizations, or industry-recognized credentialing bodies, including making governance or decision-making changes as an alternative to allowing or requiring faculty control or approval or integrating industry-recognized credentials into existing degree programs.

(g) *Calculation of percentage of a program.* When determining the percentage of the program that is provided by an ineligible institution or organization under paragraph (c) of this section, the institution



## SESSION 4

shall divide the number of semester, trimester, or quarter credit hours, clock hours, or the equivalent that are provided by the ineligible organization or organizations by the total number of semester, trimester, or quarter credit hours, clock hours, or the equivalent required for completion of the program. A course is provided by an ineligible institution or organization if the contracted organization with which the institution has a written agreement has authority over the design, administration, or instruction in the course, including, but not limited to—

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(1) Establishing the requirements for successful completion of the course;

(2) Delivering instruction in the course; or

(3) Assessing student learning.

(h) *Non-applicability to other interactions with outside entities.* Written arrangements are not necessary for, and the limitations in this section do not apply to—

(1) Acceptance by the institution of transfer credits or use of prior learning assessment or other non-traditional methods of providing academic credit; or

(2) The internship or externship portion of a program if the internship or externship is governed by accrediting agency standards that require the oversight and supervision of the institution, where the institution is responsible for the internship or externship and students are monitored by qualified institutional personnel.

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

[65 FR 65674, Nov. 1, 2000, as amended at 75 FR 66948, Oct. 29, 2010; 75 FR 67198, Nov. 1, 2010]

### §668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.<sup>1</sup>

### §668.7 [Reserved]

### §668.8 Eligible program.<sup>2</sup>

\* \* \*

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

<sup>1</sup> The Department proposed to remove section 668.6 in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

<sup>2</sup> The Department proposed to amend section 668.8 by revising paragraphs (d)(2)(iii) and (d)(3)(iii) in the Program Integrity: Gainful Employment NPRM. See 83 FR 40167 (August 14, 2018).

## SESSION 4

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree;

(3) For purposes of the FFEL and Direct Loan programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section; or

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

## SESSION 4

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The institution can demonstrate, in accordance with 34 CFR 668.14(b)(26) that the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under §668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

\* \* \*

(k) *Undergraduate educational program in credit hours.* 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—

(1) 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

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that institution's provides an associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that—

(i) ~~The institution's degree~~ The eligible program requires at least two academic years of study; and

## SESSION 4

~~(ii) The institution demonstrates can demonstrate that students enroll in, and graduate at least one student was enrolled in graduated from, the degree program program during the current or most recently completed award year.~~

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

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

~~(ii) A or 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 not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours 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; and~~

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

~~(C) (2) A quarter hour must include at least 20 clock hours of instruction.~~

~~(m) (l) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for title IV, HEA program purposes if the program is offered by an institution, other than a foreign institution, that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that—~~

~~(1) Is recognized by the Secretary under subpart 2 of part H of the HEA; and~~

~~(2) Has accreditation of distance education within the scope of its recognition.~~

~~(m) For Title IV, HEA program purposes, eligible program includes a direct assessment program approved by the Secretary under §668.10 and a comprehensive transition and postsecondary program approved by the Secretary under §668.232.~~

(Authority: 20 U.S.C. 1070a, 1070a-1, 1070b, 1070c-1, 1070c-2, 1070g, 1085, 1087aa-1087hh, 1088, 1091; 42 U.S.C. 2753)

[20/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

[59 FR 22421, Apr. 29, 1994]

### §668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

### §668.10 Direct assessment programs.

(a)(1) A direct assessment program is ~~an instructional~~ program that, in lieu of credit hours or clock hours as the measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. The assessment must be consistent with the accreditation of the institution or program utilizing the results of the assessment.

(2) Direct assessment of student learning means a measure ~~by the institution of what~~ of a student knows and can do in terms of the body of student's knowledge ~~making up the educational program. These measures, skills, and abilities designed to provide evidence that a student has command of a specific of the student's proficiency in the relevant~~ subject, content area, or skill ~~or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated.~~

(3) An institution must establish a methodology to reasonably equate each module in the direct assessment program to either credit hours or clock hours. This methodology must be consistent with the subject matter of the program. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios ~~requirements of the institution's accrediting agency or State approval agency.~~

~~(3)(4)~~ All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. ~~Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours according to whether they use credit or clock hour equivalencies, respectively.~~

~~(i) An academic year in a~~ (5) A direct assessment program ~~that is a period not consistent with the requirements of instructional time that consists of a minimum of 30 weeks of instructional time during which, for the institution's accrediting agency or State approval agency is not an undergraduate educational~~ eligible program, a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours, as provided under §668.8. In order for any direct assessment programs to qualify as eligible programs, the accrediting agency must have –

(1) Evaluated the programs based on the agency's accreditation standards and criteria, and included them in the institution's grant of accreditation or preaccreditation; and

(2) Reviewed and approved the institution's claim of each direct assessment program's equivalence in terms of credit or clock hours.

214/10/2019 5:59 PM 4/3/2019 10:56 AM 4/3/2019 8:15 AM 4/2/2019 6:47 PM 4/2/2019 2:28 PM 3/31/2019 1:34 PM 3/30/2019 5:54 PM

## SESSION 4

(ii) A payment period in a direct assessment program for which equivalence in credit hours has been established must be determined under the requirements in §668.4(a), (b), or (c), as applicable, using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program). A payment period in a direct assessment program for which equivalence in clock hours has been established must be determined under the requirements in §668.4(c), using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program).

(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of full-time student in §668.2 based on the credit or clock-hour equivalency established by the institution for the direct assessment program.

(b) An institution that ~~offers~~ wishes to offer a direct assessment program must apply to the Secretary to have ~~that its direct assessment program or programs~~ determined to be an eligible program for title IV, HEA program purposes. ~~The institution's~~ Following the Secretary's initial approval of a direct assessment program, additional direct assessment programs at an equivalent or lower academic level may be determined to be eligible without further approvals from the Secretary except as required by subject to the requirements in §600.10(c)(1)(iii), §600.20(c)(1), or §600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval agency, except that an institution must always seek approval for a direct assessment program the first time it offers such a program at a higher level of offering. The institution's direct assessment application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2) A description of how the assessment of student learning is done;

~~(3)~~(2) A description of how the direct assessment program is structured, including information about how and when the institution determines on an individual basis what each student enrolled in the program needs to learn and how the institution excludes from consideration of a student's eligibility for title IV, HEA program funds any credits or competencies earned on the basis of prior learning;

[224/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

~~(4)(3)~~ A description of how learning is assessed and how the institution assists students in gaining the knowledge needed to pass the assessments;

~~(5)(4)~~ The number of semester, trimester, or quarter credit hours, or clock hours, that are equivalent to the amount of student learning being directly assessed for the certificate or degree, ~~as required by paragraph (b)(2) of this section;~~

~~(6)(5)~~ The methodology the institution uses to determine the number of credit or clock hours to which the program ~~is or programs are~~ equivalent; and

~~(7)~~ The methodology the institution uses to determine the number of credit or clock hours to which the portion of a program an individual student will need to complete is equivalent;

~~(8)(6)~~ Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of direct assessment program(s) and has included the program(s) in the institution's grant of accreditation; and approval documentation from the accrediting agency or State approval agency indicating agreement with the institution's methodology for determining the direct assessment program's equivalence in terms of credit or clock hours.

~~(9)~~ Documentation from the accrediting agency or relevant state licensing body indicating agreement with the institution's claim of the direct assessment program's equivalence in terms of credit or clock hours; and

~~(10)~~ Any other information the Secretary may require to determine whether to approve the institution's application.

~~(c)~~ To be an eligible program, a direct assessment program must meet the requirements in §668.8 including, if applicable, minimum program length and qualitative factors.

~~(d)(7)~~ Notwithstanding paragraphs (a) through ~~(c) and (b)~~ of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under §668.8.

~~(e)~~ A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in §668.5(c)(3).

~~(f)(d)~~ Title IV, HEA program funds may be used only for learning that results from to support instruction provided, or overseen, by the institution, except not for the portion of the program that the student has demonstrated mastery of prior to enrollment in the program is awarded based on prior learning completes based on prior mastery or tests of learning that are not associated with educational activities overseen by the institution.

~~(g)~~ Title IV, HEA program eligibility with respect ~~(e)~~ Unless an institution has received initial approval from the Secretary, to offer direct assessment programs is limited to, and the institution's offering of direct assessment programs approved by coursework is consistent with the Secretary.

## SESSION 4

~~Title institution's accreditation and State authorization, if applicable, title IV, HEA program funds may not be used for—~~

~~(1) The course of study described in §668.32(a)(1)(ii) and (iii) and (a)(2)(i)(B), if offered by using direct assessment; or~~

~~(2) Remedial coursework described in §668.20, if offered by using direct assessment. However, remedial instruction that is offered~~

~~(f) Student progress in credit or clock hours in conjunction with a direct assessment program is eligible for title IV, HEA program funds may be measured using a combination of—~~

~~(h) The Secretary's approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution's application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.~~

~~(1) Credit hours and credit hour equivalencies; or~~

~~(2) Clock hours and clock hour equivalencies.~~

[71 FR 45693, Aug. 9, 2006, as amended at 71 FR 64397, Nov. 1, 2006; 72 FR 62026, Nov. 1, 2007]

### Subpart B—Standards for Participation in Title IV, HEA Programs

SOURCE: 52 FR 45727, Dec. 1, 1987, unless otherwise noted.

#### §668.11 Scope.

#### §668.12 [Reserved]

#### §668.13 Certification procedures.

(a) *Requirements for certification.* (1)(i) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

~~(ii) On application from the institution, the Secretary certifies a location of an institution that meets the requirements of 34 CFR 668.13(a)(1)(i) as a branch if it satisfies the definition of "branch" in 600.2.~~

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to

~~24/10/2019 5:59 PM 4/3/2019 10:56 AM 4/3/2019 8:15 AM 4/2/2019 6:47 PM 4/2/2019 2:28 PM 3/31/2019 1:34 PM 3/30/2019 5:54 PM~~



## SESSION 4

complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under §668.14:

(i) The individual the institution designates under §668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates.

(3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a title IV, HEA program. An institution's period of participation expires no more than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

(i) The period of participation for a private, for profit foreign institution expires three years after the date of the Secretary's certification; and

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(3) In the event that the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of its current period of participation, the institution shall automatically be granted renewal of certification, which may be provisional.

\* \* \*

(c) *Provisional certification.* (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

[25/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(1) That is applying for a certification that the institution meets the standards of this subpart;

(2) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under §668.15 and subpart L of this part or the standards of administrative capability under §668.16; and

(3) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; ~~or~~

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603; ~~or~~

(F) The institution is a participating institution that has been provisionally recertified under the automatic recertification requirement in paragraph (b)(3).

(ii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under §668.14(b)(16).

\* \* \*

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in §668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or ~~facsimile~~electronic transmission.

(ii) The filing date of the request is the date on which the request is—

[264/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

Commented [A2]: Added language to incorporate automatic recertification under proposed 668.13(b)(3).

## SESSION 4

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by ~~facsimile~~electronic transmission.

(iii) Documents filed by ~~facsimile~~electronic transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. ~~An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.~~

~~(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.~~

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(~~ii~~) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service or another service that provides delivery confirmation for that document.

~~(ii) The date on which a request for reconsideration of a revocation is submitted is —~~

~~(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and~~

~~(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.~~

274/10/2019 5:59 PM4/3/2019 10:56 AM4/3/2019 8:15 AM4/2/2019 6:47 PM4/2/2019 2:28 PM3/31/2019 1:34 PM3/30/2019 5:54 PM

## SESSION 4

(Approved by the Office of Management and Budget under control number 1845-0537)

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1989 Comp., p. 189) and E.O. 12689 (3 CFR, 1989 Comp., p. 235))

[59 FR 22424, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 60 FR 34431, June 30, 1995; 62 FR 62876, Nov. 25, 1997; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 65 FR 65675, Nov. 1, 2000; 74 FR 55934, Oct. 29, 2009; 75 FR 67198, Nov. 1, 2010]

### §668.14 Program participation agreement.

\* \* \*

(b) By entering into a program participation agreement, an institution agrees that—

\* \* \*

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, ~~the institution~~ it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, including the source of such statistics and any associated time frames and methodology; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution the course of instruction is designed to prepare such these prospective students;

\* \* \*

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency—if the number of clock hours provided in the program does not exceed the greater of—

(A) One hundred and fifty percent of the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency; or

Commented [A3]: Barbara G.D.-the institution acts with integrity in adversting job placement rates..

[284/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(B) The minimum number of clock hours required for training in the recognized occupation for which the program prepares the student established in a State adjacent to the State in which the institution is located.

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in §668.414.

\* \* \*

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency. The institution will update its teach-out plan upon the occurrence of any of the following events:

\* \* \*

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)

[59 FR 22425, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 64 FR 59038, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 67 FR 67072, Nov. 1, 2002; 73 FR 35492, June 23, 2008; 74 FR 55648, Oct. 28, 2009; 74 FR 55934, Oct. 29, 2009; 76 FR 66950, Oct. 29, 2010; 76 FR 20536, Apr. 13, 2011; 79 FR 65007, Oct. 31, 2014]

### **§668.15 Factors of financial responsibility for changes in ownership or control.**

(a) *General.* To begin and to continue to participate in any Title IV, HEA program after a change in ownership or control, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

\* \* \*

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[59 FR 22428, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 59 FR 61179, Nov. 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, Aug. 15, 1995; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 62 FR 27128, May 16, 1997; 71 FR 45694, Aug. 9, 2006; 75 FR 67198, Nov. 1, 2010]

29/10/2019 5:59 PM 4/3/2019 10:56 AM 4/3/2019 8:15 AM 4/2/2019 6:47 PM 4/2/2019 2:28 PM 3/31/2019 1:34 PM 3/30/2019 5:54 PM

## SESSION 4

**§668.16 Standards of administrative capability.**

**§668.17 [Reserved]**

**§668.18 Readmission requirements for servicemembers.**

**§668.19 Financial aid history.**

**§668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.**

**§668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.**

**§668.22 Treatment of title IV funds when a student withdraws.**

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2)(i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; ~~or~~

(C) For a student in a ~~nonterm standard~~ or nonstandard-term program, excluding a subscription-based program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section; ~~or~~

(D) For a student in a non-term program or a subscription-based program, the student is unable to resume attendance within a payment period or period of enrollment for more than 60 calendar days after ceasing attendance.

(ii)(A) Notwithstanding paragraph (a)(2)(i)(A) and (a)(2)(i)(B) of this section, ~~for —~~

(1) A student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn;

## SESSION 4

(2) In a program offered in modules, a student is not considered to have withdrawn if the student completes —

(i) One module that includes 50 percent or more of the number of days in the payment period;

(ii) A combination of modules that when combined contain 50 percent or more of the number of days in the payment period; or

(iii) Coursework equal to or greater than the coursework required for the institution's definition of a half-time student under 34 CFR 668.2 for the payment period.

(3) For a payment period or period of enrollment in which courses in the program are offered in modules—

(4i) A student is not considered to have withdrawn if the institution obtains written confirmation, including electronic confirmation, from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(4ii) For ~~non-term~~ standard and nonstandard-term programs, excluding subscription-based programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending; and

(4) For a subscription-based program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date occurs within the same payment period or period of enrollment and is no later than 60 calendar days after the student ceased attendance.

(5) For a non-term program, a student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will resume attendance, and that date is no later than 60 calendar days after the student ceased attendance.

(B) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(1) A student may change the date of return ~~to a module~~ that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; ~~and~~

(2) For ~~non-term~~ standard and nonstandard-term programs, excluding subscription-based programs, the later module that he or she will attend begins no later than 45 calendar days after the end of module the student ceased attending; and

(3) For non-term and subscription-based programs, the student's program permits the student to resume attendance no later than 60 calendar days after the student ceased attendance.

31/10/2019 5:59 PM 4/3/2019 10:56 AM 4/3/2019 8:15 AM 4/2/2019 6:47 PM 4/2/2019 2:28 PM 3/31/2019 1:34 PM 3/30/2019 5:54 PM

## SESSION 4

(C) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(1) The student is considered to have withdrawn from the payment period or period of enrollment; and

(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 support the full amount of those funds.

(B) In accordance with §668.4(f), if a student withdraws from a clock-hour or ~~non-term~~non-term credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, 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.

(3) For purposes of this section, "title IV grant or loan assistance" includes only assistance from the ~~Federal Perkins Loan, Direct Loan, FFEL, Federal Pell Grant, Academic Competitiveness Grant, National SMART, Iraq and Afghanistan Service Grant, TEACH Grant, and FSEOG programs~~, not including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(4) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(5) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference



## SESSION 4

between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(6) of this section and §668.164(g).

(6)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges in accordance with §668.164(c) with all or a portion of any—

(1) Grant funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1), and (d)(2); and~~

(2) Loan funds that make up the post-withdrawal disbursement ~~in accordance with §668.164(d)(1), (d)(2), and (d)(3)~~ only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

\* \* \*

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or ~~nonterm~~non-term credit hour program, or a subscription-based program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

\* \* \*

(i) *Order of return of title IV funds—*(1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be

[334/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

- (i) Unsubsidized Federal Direct Stafford loans.
- (ii) Subsidized Federal Stafford loans.
- ~~(iii) Unsubsidized Federal Direct Stafford loans.~~
- ~~(iv) Subsidized Federal Direct Stafford loans.~~
- ~~(v) Federal Perkins loans.~~
- ~~(vi) Federal PLUS loans received on behalf of the student.~~
- ~~(vii)(iii) Federal Direct PLUS received on behalf of the student.~~

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

- (i) Federal Pell Grants.
- (ii) Academic Competitiveness/Iraq and Afghanistan Service Grants.
- (iii) National SMART Grants.
- ~~(iv) FSEOG Program aid.~~
- ~~(v) TEACH Grants.~~

\* \* \*

(l) *Definitions.* For purposes of this section—

(1) Title IV grant or loan funds that “could have been disbursed” are determined in accordance with the late disbursement provisions in §668.164(g).

(2) A “period of enrollment” is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The “date of the institution's determination that the student withdrew” for an institution that is not required to take attendance is—

## SESSION 4

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his or her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A "recipient of title IV grant or loan assistance" is a student for whom the requirements of §668.164(g)(2) have been met.

(5) Terms are "substantially equal in length" if no term in the program is more than two weeks of instructional time longer than any other term in that program.

(6) A program is "offered in modules" if the program uses a standard term or nonstandard term academic calendar, is not a subscription-based program, and a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) "Academic attendance" and "attendance at an academically-related activity" ~~—~~ must include academic engagement as defined under 34 CFR 600.2.

~~(A) Include, but are not limited to—~~

~~(1) Physically attending a class where there is an opportunity for direct interaction between the instructor and students;~~

~~(2) Submitting an academic assignment;~~

~~(3) Taking an exam, an interactive tutorial, or computer-assisted instruction;~~

~~(4) Attending a study group that is assigned by the institution;~~

~~(5) Participating in an online discussion about academic matters; and~~

~~(6) Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and~~

[354/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

~~(B) Do not include activities where a student may be present, but not academically engaged, such as—~~

- ~~(1) Living in institutional housing;~~
- ~~(2) Participating in the institution's meal plan;~~
- ~~(3) Logging into an online class without active participation; or~~
- ~~(4) Participating in academic counseling or advisement.~~

(ii) A determination of “academic attendance” or “attendance at an academically-related activity” must be made by the institution; a student’s certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c).

(9) A student in a program offered in modules is scheduled to complete the days in a module if the student’s coursework in that module was used to determine the amount of the student’s eligibility for Title IV, HEA funds for the payment period or period of enrollment.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1070g, 1091b)

[64 FR 59038, Nov. 1, 1999, as amended at 67 FR 67073, Nov. 1, 2002; 71 FR 45694, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 72 FR 62027, Nov. 1, 2007; 73 FR 35493, June 23, 2008; 75 FR 66951, Oct. 29, 2010]

### **§668.23 Compliance audits and audited financial statements.**

### **§668.24 Record retention and examinations.**

### **§668.25 Contracts between an institution and a third-party servicer.**

### **§668.26 End of an institution’s participation in the Title IV, HEA programs.**

\* \* \*

(d)(1) An institution may use funds that it has received under the Federal Pell Grant, TEACH Grant Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

- (i) The institution’s participation in that Title IV, HEA program ends during a payment period;

[36/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Family Education Loan Programs loan to satisfy any unpaid commitment made to the student under the Federal Family Education Loan Programs Loan Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment.

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the Direct Loan Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or disburse to the student the proceeds of a Direct Loan Program loan only if—

(i) The institution's participation in the Direct Loan Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) Notwithstanding paragraph (d) of this section, with agreement from the institution's accrediting agency and State, the Secretary may permit an institution to continue to originate, award, or disburse funds under a Title IV, HEA program for no more than 120 days following the end of that the institution's participation in the program if—

(1) The institution has notified the Secretary of its plans to conduct an orderly closure in accordance with any applicable requirements of its accrediting agency;

[374/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(2) As part of the institution's orderly closure, it is performing a teach-out that has been approved by its accrediting agency;

(3) The institution agrees to abide by the conditions of the Program Participation Agreement that was in effect prior to the end of its participation, except that it will originate, award, or disburse funds under that program only to previously enrolled students who can complete the program within 120 days of the date that the institution's participation ended; and

(4) The institution presents the Secretary with acceptable written assurances that—

(i) The health and safety of the institution's students is not at risk; and

(ii) The institution has adequate financial resources to ensure that instructional services remain available to students during the teach-out.

(iii) The institution is not subject to probation or equivalent, or adverse action by the institutions state authorizing body or accrediting agency.

~~(e)~~(f) For the purposes of this section—

(1) A commitment under the Federal Pell Grant and TEACH Grant programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report; and

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid.

### **§668.27 Waiver of annual audit submission requirement.**

### **§668.28 Non-title IV revenue (90/10).**

\* \* \*

~~(b) *Net present value (NPV).* (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—~~

~~(i) Using the formula,  $NPV = \text{sum of the discounted cash flows } R^t / (1 + i)^t$ , where—~~

~~(A) The variable "*i*" is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;~~

~~(B) The variable "*t*" is time or period of the cash flow, in years, from the time the loan entered repayment; and~~

~~(C) The variable "*R*" is the net cash flow at time or period *t*; and~~

[384/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable “t”; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable “t”; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution’s loan collection rate (e.g., the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable “R” in each period “t”, for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(b) [Reserved]

\* \* \*

(Approved by Office of Management and Budget under control number 1845-NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, 1141)

[74 FR 55937, Oct. 29, 2009]

### **Appendix A to Subpart B of Part 668—Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)**

### **Appendix B to Subpart B of Part 668—Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)**

### **Appendix C to Subpart B of Part 668—90/10 Revenue Calculation**

### **Subpart C—Student Eligibility**

SOURCE: 60 FR 61810, Dec. 1, 1995, unless otherwise noted.

## SESSION 4

### §668.31 Scope.

### §668.32 Student eligibility—general.

### §668.33 Citizenship and residency requirements.

### §668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* 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)(4) The policy specifies—~~

~~(i) For all programs, the maximum timeframe as defined in paragraph (b) of this section; and~~

~~(ii) For a credit hour program using standard or nonstandard terms that is not a subscription-based program, the pace, measured at each evaluation, 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~~



## SESSION 4

~~(ii) An institution calculates the pace at which the student is progressing by~~ calculated by either dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted- or by determining the number of hours that the student should have completed at the evaluation point in order to complete the program within the maximum timeframe. 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;

\* \* \*

*Maximum timeframe.* 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 or expressed in calendar time;

(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.

\* \* \*

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

[75 FR 66953, Oct. 29, 2010]

## SESSION 4

**§668.35 Student debts under the HEA and to the U.S.**

**§668.36 Social security number.**

**§668.37 Selective Service registration.**

**§668.38 Enrollment in telecommunications and correspondence courses.**

**§668.39 Study abroad programs.**

**§668.40 Conviction for possession or sale of illegal drugs.**

### **Subpart D—Institutional and Financial Assistance Information for Students**

SOURCE: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

**§668.41 Reporting and disclosure of information.<sup>3</sup>**

\* \* \*

(d) *General disclosures for enrolled or prospective students.* An institution must make readily available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to §668.42).

(2) The institution (pursuant to §668.43).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to §668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

<sup>3</sup> The Department proposed to amend section 600.41 by revising paragraphs (a) and (c) and adding a new paragraph (h) in the Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program NPRM (Borrower Defense NPRM). See 83 FR 37242 (July 31, 2018).

## SESSION 4

(A) The institution's placement rate for any program, if it ~~calculates, publishes or uses in advertising~~ such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

~~(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.~~

~~(iii) The institution must disclose any placement rates it calculates.~~

(6) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

\* \* \*

(Approved by the Office of Management and Budget under control number 1845-0004)

(Authority: 20 U.S.C. 1092)

[64 FR 59066, Nov. 1, 1999, as amended at 74 FR 55942, Oct. 29, 2009]

### **§668.42 Financial assistance information.**

### **§668.43 Institutional information.**

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

\* \* \*

(5) The academic program of the institution, including—

[43/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution's faculty and other instructional personnel;

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification completion of the program would fulfill educational requirements for licensure;

(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification completion of the program would not fulfill educational requirements for licensure; and

(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification regarding whether completion of the program would fulfill educational requirements for licensure; and

\* \* \*

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution and any sources types of institutions or sources from which the institution will not accept credits; and

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other demonstrated competency or learning.

(12) A description of written arrangements the institution has entered into in the program description in accordance with §668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

[44/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

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## SESSION 4

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

\* \* \*

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

(iv) Are a self-identified member of a racial or ethnic group;

(14) If the institution's accrediting agency or State requires the institution to calculate and report a placement rate, the institution's placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources approved by the institution's accrediting agency as applicable;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(16) The fire safety report prepared by the institution pursuant to §668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and

(18) Institutional policies regarding vaccinations.

(19) If the institution is required to maintain a teach-out plan by its accrediting agency, notice that the institution is required to maintain such teach-out plan and the reason that the accrediting agency required such plan under §602.24(c)(1); and

(20) If the institution is aware that it is under investigation, action, or prosecution by a law enforcement agency for an issue related to academic quality, misrepresentation, fraud, or other severe matters, notice of that fact.

## SESSION 4

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accrediting agency 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) Direct disclosures to students. (1) If the institution has made a determination under paragraph (a)(5)(v) that the program's curriculum does not meet the State educational requirements for licensure or certification ~~does not fulfill educational requirements for licensure in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification~~ would fulfill educational requirements for licensure in that State, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.

(2) If the institution makes a determination under paragraph (a)(5)(v)(B) that a program's curriculum does not meet the State educational requirements for licensure or certification ~~does not meet licensure or certification prerequisites in a State in which a student who is currently enrolled in such program is located,~~ the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (c)(2) must be made directly to the student in writing, which may include through e-mail or other electronic communication.

(ii)(A) For purposes of this subsection, an institution must make a determination regarding the State in which a student is located in accordance with the institution's policies or procedures, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location under paragraph (3)(i)(A), including the basis for such determination; and

(C) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures under paragraph (3)(ii)(A), that the student's location has changed to another State.

-(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1092)

[64 FR 59068, Nov. 1, 1999, as amended at 74 FR 55943, Oct. 29, 2009; 75 FR 66954, Oct. 29, 2010]

## SESSION 4

**§668.44 Availability of employees for information dissemination purposes.**

**§668.45 Information on completion or graduation rates.**

**§668.46 Institutional security policies and crime statistics.**

**§668.47 Report on athletic program participation rates and financial support data.**

**§668.48 Report on completion or graduation rates for student-athletes.**

**§668.49 Institutional fire safety policies and fire statistics.**

**§668.50 ~~[Reserved] Institutional disclosures for distance or correspondence programs<sup>4</sup>.~~**

(a) General. In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) Public disclosures. An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is authorized by each State in which enrolled students reside to provide the program;

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and

(iii) An explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;

(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of

<sup>4</sup>Section 668.50 was added through the publication of 81 FR 92232 on 12/19/2016. Its effective date has been delayed until July 1, 2020. We propose to delete this section.

## SESSION 4

consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9 (c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect;

(c) Individualized disclosures. (1) An institution described under 34 CFR 600.9 (a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—



## SESSION 4

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence; and

~~(ii) To each enrolled and prospective student—~~

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

### **Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program**

### **Subpart E—Verification and Updating of Student Aid Application Information**

### **Subpart F—Misrepresentation**

### **Subpart G—Fine, Limitation, Suspension and Termination Proceedings**

### **Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations**

SOURCE: 52 FR 30115, Aug. 12, 1987, unless otherwise noted. Correctly designated at 52 FR 46354, Dec. 7, 1987.

#### **§668.111 Scope and purpose.**

(a) This subpart establishes rules governing the issuance by the Department of, and appeal by an institution or third-party servicer from, a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

\* \* \*

[49/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 59 FR 22452, Apr. 29, 1994]

### §668.112 Definitions.

### §668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer must file its request for review no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer ~~shall~~**must** attach to the request for review a copy of the final audit determination or final program review determination, and ~~must~~**shall**—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

~~(d)~~(1) If the final audit determination or final program review determination in subsection (a) of this section results from the institution's classification of a course or program as distance education, or the institution's assignment of credit hours, the Secretary relies upon the requirements of the institution's accrediting agency or State approval agency regarding qualifications for instruction and whether the amount of work associated with the institution's credit hours is consistent with commonly accepted practice in postsecondary education, in applying the definitions of "distance education" and "credit hour" in 34 CFR 600.2.

(2) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

~~(2)~~(3) If the institution is charged with a liability as a result of an error described in paragraph (d)~~(1)~~(2) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c-1)

504/10/2019 5:59 PM4/3/2019 10:56 AM4/3/2019 8:15 AM4/2/2019 6:47 PM4/2/2019 2:28 PM3/31/2019 1:34 PM3/30/2019 5:54 PM

## SESSION 4

[59 FR 22452, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 64 FR 58619, Oct. 29, 1999; 78 FR 48051, Aug. 7, 2013]

**§668.114 Notification of hearing.**

**§668.115 Prehearing conference.**

**§668.116 Hearing.**

**§668.117 Authority and responsibilities of the hearing official.**

**§668.118 Decision of the hearing official.**

**§668.119 Appeal to the Secretary.**

**§668.120 Decision of the Secretary.**

**§668.121 Final decision of the Department.**

**§668.122 Determination of filing, receipt, and submission dates.**

**§668.123 Collection.**

**§668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.**

### **Subpart I—Immigration-Status Confirmation**

### **Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process**

### **Subpart K—Cash Management**

**§668.161 Scope and institutional responsibility.**

**§668.162 Requesting funds.**

**§668.163 Maintaining and accounting for funds.**

**§668.164 Disbursing funds.**

\* \* \*

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the

[514/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length that is not a subscription-based program, 10 days before the first day of classes of a payment period; ~~or~~

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length; that is not a subscription-based program, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds; or

(iii) If the student is enrolled in a subscription-based program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the cumulative number of credit hours associated with the student's enrollment status in all prior terms that the student attended under the definition of a subscription-based program in 34 CFR 668.2.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

\* \* \*

[524/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

### §668.165 Notices and authorizations.

### §668.166 Excess cash.

### §668.167 Severability.

## Subpart L—Financial Responsibility

### §668.171 General.

\* \* \*

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in §668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under §668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; ~~or~~

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in §668.13(d); ~~or~~

(3) Deny the institution's application for certification or recertification to participate in the Title IV, HEA programs.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 64 FR 59042, Nov. 1, 1999; 65 FR 65637, Nov. 1, 2000; 67 FR 67074, Nov. 1, 2002; 75 FR 67199, Nov. 1, 2010]

### §668.172 Financial ratios.<sup>5</sup>

\* \* \*

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 65 FR 65637, Nov. 1, 2000]

<sup>5</sup> The Department proposed to add a new paragraph (d) to section 668.172 in the Borrower Defense NPRM. See 83 FR 37242 (July 31, 2018).

[534/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

### §668.174 Past performance.

(a) *Past performance of an institution.* An institution is not financially responsible if the institution—

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons or entities affiliated with an institution.* (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person or entity who exercises substantial ownership or control over the institution, as described under 34 CFR 600.310, or any member or members of that person's family, alone or together—

(A) Exercises or exercised substantial ownership or control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; ~~or~~

(B) Exercised substantial ownership or control over another institution that closed without a viable teach-out plan or agreement approved by the institution's accrediting agency and faithfully executed by the institution; or

~~(B)(C)~~ (C) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, entity, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if—

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person or entity referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

**Commented [A5]:** NOTE TO NEGOTIATORS: The Department has included this text proposed by Mr. McComis during the third session. The Department is willing to entertain this proposal, but we do not believe that as currently written it will add substantial protections or prove effective at preventing abuses by owners of institutions that precipitously close. In most cases, an institution that precipitously closes is subject to liabilities that it is unable to pay, and this failure to pay liabilities results in the same effect as the provision proposed by Mr. McComis.

## SESSION 4

(ii) The person or entity referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that entity, person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the entity, person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person or entity who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person or entity who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term "ownership interest" includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person or entity to exercise substantial control over an institution or third-party servicer if the person or entity —

[554/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership interest in the institution or servicer; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

(4) “Family member” is defined in §600.21(f) of this chapter.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 67 FR 67075, Nov. 1, 2002]

### **§668.175 Alternative standards and requirements.<sup>6</sup>**

\* \* \*

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

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<sup>6</sup> The Department proposed to amend section 668.175 by revising paragraphs (a) through (d) and (f) and adding a new paragraph (h) in the Borrower Defense NPRM. See 83 FR 37242 (July 31, 2018).



## SESSION 4

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under this zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in §668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic ~~or facsimile~~ transmission no later than 10 days after that event occurs. An institution that provides this information electronically ~~or by facsimile transmission~~ is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

[574/10/2019 5:59 PM](#)[4/3/2019 10:56 AM](#)[4/3/2019 8:15 AM](#)[4/2/2019 6:47 PM](#)[4/2/2019 2:28 PM](#)[3/31/2019 1:34 PM](#)[3/30/2019 5:54 PM](#)

## SESSION 4

(4) If an institution fails to comply with the requirements under paragraphs (d) (2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) [Reserved]

\* \* \*

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 81 FR 76075, Nov. 1, 2016]

### **§668.176 Severability.**

#### **Appendix A to Subpart L of Part 668—Ratio Methodology for Proprietary Institutions**

#### **Appendix B to Subpart L of Part 668—Ratio Methodology for Private Non-Profit Institutions**

#### **Appendix C to Subpart L of Part 668—XXX**

#### **Subpart M—Two Year Cohort Default Rates**

#### **Subpart N—Cohort Default Rates**

#### **Subpart O—Financial Assistance for Students With Intellectual Disabilities**

#### **Subpart P [Reserved]**

#### **Subpart Q—Gainful Employment (GE) Programs**

#### **Subpart R—Program Cohort Default Rate**