N·A·S·F·A·A
NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS
★ FROM THE OFFICE OF THE PRESIDENT ★

August 2, 2010

Docket ID ED–2010–OPE–0004

Response to Program Integrity NPRM
U.S. Department of Education

On behalf of the National Association of Student Financial Aid Administrators (NASFAA), I am responding to your request for comment on the Program Integrity Notice of Proposed Rulemaking published on June 18, 2010. NASFAA represents more than 18,000 financial aid professionals who serve 16 million students each year at 2,800 colleges and universities of all types throughout the country.

We appreciate the Department's diligence in seeking public input throughout the regulatory process, and the Department's sincere efforts at reaching consensus through the negotiated rulemaking process.

If you have any questions on any of our comments, please contact NASFAA's Director of Legislative and Regulatory Analysis, Joan Berkes (berkesj@nasfaa.org, or 202.785.6970).

Sincerely,

Justin Draeger
President

Opening Doors of Educational Opportunity

PHONE: 202.785.0453 FAX: 202.785.1487 WEB: www.nasfaa.org
1101 CONNECTICUT AVE NW, SUITE 1100, WASHINGTON, DC 20036-4303

NASFAA COMMENTS ON PROGRAM INTEGRITY NPRM

Gainful employment

668.6(b)

We support additional disclosures relating to programs intended to prepare student for gainful employment, but we believe they belong in subpart D along with all other student consumer information requirements, and that any new disclosures should be made as consistent as possible with current student consumer information requirements. ED's concerns about the form in which disclosures are made can be addressed in the context of existing subpart D rules.

We have the following questions about the proposed disclosures:

- Under proposed 668.6(b)(1), and in any other disclosure or reporting requirements, provision should be made for graduate certificate programs that may be subspecialties within established fields and for very specialized undergraduate programs offered in response to employer arrangements, for which existing SOC and CIP codes may not suffice.
- Under proposed 668.6(b)(2), what does "on-time" mean and why are we introducing a rate different from the completion rates measured over 150% time in subpart D? Rather than introduce confusion on the part of prospective students by having multiple rates, ED should defer to existing requirements in subpart D. If ED believes there are problems related to current information dissemination requirements, those concerns should be addressed in subpart D, but need to be negotiated.
- Eliminate proposed 668.6(b)(3); if necessary, make any necessary clarifications to disclosures of cost of attendance figures already required under subpart D.
- Proposed 668.6(b)(5) needs more delineation. Loans included should only be those received for the program itself, unless a significant number of completers transferred in a significant amount of coursework from another program. Private education loans should be clarified to mean only loans the school knows students actually received. ED has not explained what it means by "institutional financing plans;" that term should not include true payment plans that are designed to last only until the end of the program and that are in fact satisfied by most students by the end of the program.

668.6(a)

We do not understand the inclusion of reporting requirements in this NPRM when their most significant use is for the proposed metrics that have only recently been published, the response due date for which is in September. We will make our comments on reporting requirements in relation to that NPRM. We believe ED must defer any final action on reporting requirements until such time as it issues final rules based on the July 26, 2010, NPRM.

Beyond that, we support ACE's comments on this issue.

Definition of credit hour

600.2, 602.24, 603.24

We appreciate ED's efforts to accommodate innovative approaches to learning outcomes in the proposed rule, but we are still wary of unintended consequences of federal intrusion into matters of academic purview and accreditation. We defer to ACE's response on this issue.

668.8(k), (l)

We support the revisions to clock-to-credit hour conversion rules, so long as ED incorporates the ability to take work outside of class time into account, as in proposed 668.8(l)(2).

State authorization

600.9

We understand ED's concern about adequate oversight, but we are concerned with federal intrusion into state affairs. We continue to believe that students would be better served if schools in states with inadequate oversight were to be subject to additional federal or accrediting agency oversight.

If ED carries through with these proposals and the worst case materializes, there needs to be an interim period of time to allow a state to satisfy ED's conditions, and during which schools continue to be eligible in order to protect students currently in attendance. In such a catastrophic event as a state's higher education community, or some segment of it, losing Title IV eligibility only because of the state's failure to satisfy ED's proscriptions, in most cases those schools will not in fact have any operating issues that would warrant loss of eligibility, or even increased federal oversight, especially without any due process for the school.

If ED carries through with these proposals, the regulations also need to provide for seamless reinstatement of full institutional eligibility when the state satisfies federal expectations.

We support ACE's comments on this issue.

Repeated coursework

668.2

We support the proposed rule.

We assume that normal rules regarding payment only for courses that apply to student's program apply. For example, if a student has already earned the maximum number of remedial courses allowable, are we correct that repeats of remedial courses could not be paid, just as remedial courses not previously taken could not be paid?

Please clarify that institutions can still set their own policy about allowing repeats and awarding credits for repeated courses if they can in fact distinguish them.

Written agreements between institutions

668.5, 668.43

We support the proposed rule, both restrictions on agreements between schools with common control and the need for disclosures. However, 668.43(b) should make allowance for situations in which a state has no process for complaints, or defers to the accrediting agency to receive and resolve complaints. We recommend ED specify using the Department's own Ombudsman as the alternative in the absence of state procedures.

Incentive compensation

668.14

We believe one of ED's most basic responsibilities is to answer requests for guidance and to tell an institution whether they are in compliance with law and regulation at the institution's request, rather than waiting for an audit or program review finding. We therefore urge ED to reverse the position it took during negotiated rulemaking that it would not answer specific requests about certain compensation structures. We further encourage ED to be as open as possible in public documents with the guidance it gives.

Beyond that, we support and defer to ACE's response on this issue.

Satisfactory academic progress

688.16, 668.32, 668.34

We appreciate that ED is allowing some continued flexibility to schools in establishing SAP policies. We support the concept of using incentives rather than penalties in regulation where possible, but some of our members object to restricting existing flexibility when they are in compliance with the minimum evaluation time frame provided in statute.

We suggest that ED consider loosening the requirement of evaluating SAP every payment period in order to use a financial aid warning status. For some schools, evaluating SAP every payment period entails an SAP evaluation every few weeks. The burden of this frequency and the attention it takes away from students who are not having SAP issues means that evaluating every payment period is not a viable option for these schools. For nonstandard terms formats, could ED set a minimum number of evaluations during the academic year, as long as grades are available to evaluate and the evaluation periods meet some minimum length that the nonstandard terms can support, rather at the end of every payment period?

The same concern also applies to treatment of an optional summer term or sessions in otherwise standard term formats, where there is a very short period of time between the end of summer and the beginning of the fall term. Evaluating the student's academic progress and allowing sufficient time for appeals before the beginning of the new academic year makes this expectation very difficult.

Alternative allowing two terms on warning

We have heard concerns about the ability of a school to handle, in a timely manner, all appeals resulting from students spending one term on warning and still not making progress. By the time all grades have been submitted and SAP evaluated, very limited time would remain for an appeals process between fall and winter quarters, winter and spring quarters, or fall and spring semesters.

Would ED consider allowing an institution to place a student on academic warning for a second term if:

- The school has examined the student's record, and determines the student—
  - has improved during the initial term on warning, and
  - has a reasonable mathematical probability of graduating within 150% of program length; and
- During the second term on warning—
  - the student undergoes increased counseling appropriate to the student's circumstances,
  - the school determines whether conditions for an appeal are justified, and
  - the student and school prepare an academic plan to bring the student into conformity with SAP standards; and
- The student remains on probation with increased counseling or monitoring for the duration of the academic plan following the second term on warning.

Other questions and clarifications

Current regulation, and current ED interpretation, specifies a student must have a "C" average after two years of attendance regardless of the student's enrollment status during that time or the number of credits accrued. The proposed rule specifies a "C" average must be obtained after two *academic* years. Please explain the ramifications of this insertion.

It is unclear to us from the proposed language whether second appeals would be allowable. For example, a student was granted an appeal for one payment period, but is still not making progress at the end of that period. Several conditions might be operative:

- The student might be experiencing different extenuating circumstances;
- The student caught up on the standard originally deficient, but now does not meet a different standard (e.g., first fails quantitative standards, then qualitative);
- The extenuating circumstances that justified the first appeal worsened, or have not resolved as anticipated, or the student simply needs more time to resolve them.

In such circumstances, the institution might decide the student would be better served if an academic plan were formulated giving a more reasonable timeframe for the student to come into compliance with graduation expectations.

The proposed rule continues to allow SAP standards to be defined by categories such as full-time students, part-time students, undergraduates, graduate students, and educational programs. Within those categories, could a school evaluate different groups of students at different frequencies? For example, evaluate freshmen and sophomores every payment period, but then upperclassmen every year? Such an approach might be used if the institution knows that students who remain enrolled after the first two years are much more likely to progress satisfactorily towards graduation. If yes, can they use financial aid warning for those groups of students who are checked every payment period?

If final rules become effective 7/1/11, which policy would apply for summer crossover periods? The effective date would make more sense if phrased as periods beginning on or after a certain date. We would also encourage ED to consider a later effective date for this provision, to allow institutions to accommodate new requirements, which may involve academic personnel and policies. Even schools that currently evaluate SAP once a year and elect to continue to do so will have to assess a student's progress after a single term on probation; that will entail significant changes to current policies and procedures.

Under the proposed rules, a student on financial aid probation for a payment period may not receive Title IV funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student. Say that after the first payment period on probation, the school determines the student is meeting the requirements of the plan. What is the student's status at that point? Does the student stay on probation for the duration of the plan? Does the school then need to check compliance with the academic plan every payment period for the length of the academic plan?

Would the rule, as proposed, allow an institution to place a student on warning for a payment period and during that period on warning, document and examine the student's circumstances to determine whether an appeal would be allowable, and prepare an academic plan to put into place if the student again fails to make SAP at the end of the warning term—essentially, prepare an appeal for use if necessary to expedite the process?

Validity of high school diplomas

668.16(p)

We appreciate ED taking responsibility to make the "first cut" so that schools do not have to duplicate each other's work across the nation. We urge ED to use all viable sources to formulate its list of valid high schools. We also encourage ED to work out a system for adding high schools to their "legitimate" list at a postsecondary school's suggestion, if ED's standards of validation are met. This would also eliminate some degree of duplicative work by other institutions.

We support the concept that high school diplomas, if a school is using them as the basis for admission or Title IV aid eligibility, need to be valid. We suggest adding a caveat to the rules

that validation by an institution is not necessary if it is not the basis of a student's admission or Title IV eligibility.

We suggest restricting the validation requirement to undergraduates. Graduate students should be assumed to have the equivalent of a high school diploma by virtue of the fact that they have completed at least two years towards a baccalaureate.

We suggest allowing an institution to waive a validation requirement if the student is beyond the age of compulsory attendance and has already earned at least 6 credits acceptable towards an eligible program offered by the institution. This exception would reflect the fact that a student who is beyond the age of compulsory attendance can be admitted without a high school diploma, and a student who has earned at least 6 credits can be considered eligible for Title IV assistance.

We request an avenue for waiving validation if a student is substantially older than the traditional age. Such a waiver would address issues of high schools that are no longer in existence or readily identifiable. We also request clarification of the treatment of home-schooled students.

If a student is flagged for validation of the high school diploma, and the diploma would not be required for admission under the institution's policies and Title IV regulations, the school and student should have the option to use some other means of establishing Title IV eligibility… the requirement to validate should not preclude other avenues. For example, at a school with an open enrollment mandate, a student who is beyond the age of compulsory attendance is flagged for validation of the claimed high school diploma. The student should be able to take an ability-to-benefit test, if the school routinely uses them, to establish Title IV eligibility without penalty.

If some of these waivers are adopted, it should be made clear that an institution that does not normally admit a student without a high school diploma or its equivalent can still choose to validate that diploma regardless of any waivers the institution may be allowed to exercise.

We urge ED to interpret sec. 123 of the HEA as applicable to high school diploma mills as well as postsecondary diploma mills, and redouble efforts to eliminate mills on both levels.

Return of Title IV Funds: Modules

668.22

We understand ED's concerns in this issue. The problem is in isolating and eliminating the abuses without penalizing schools that do not misuse the provision that allows combining short sessions into a standard term.

Because we ran out of negotiating time due to the ambitious list of topics to be negotiated, we recommend the Department not issue final regulations at this time, but rather seek further input from the community. However, we submit the following comments on the approach proposed in this NPRM.

A number of questions arise from the proposed definition of "withdrawn." Does ED really mean *all* days (or *all* clock hours)? It is not uncommon for students to be absent for some days, for example, due to illness or simply because their instructors do not take or demand attendance at all class sessions as long as the student completes all assignments and tests. Clock hour programs also allow a certain amount of excused and unexcused absences. How are limited absences to be treated under this language? If a student obtains a grade, for example, or earns the clock hours for a given course, should that course not be considered to have been completed regardless of absences?

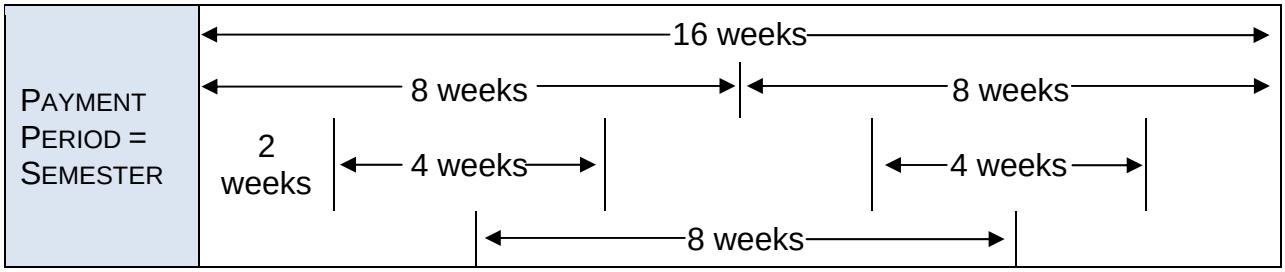
How would leaves of absence be treated? Incompletes?

What ramifications could the proposed definition have on grace periods for loans? For example, a student who has an in-school *deferment* is regarded as having withdrawn under the new definition because he does not attend the last module in a payment period as expected, but he will attend the next payment period: must he be reported as having withdrawn?

Questions also arise regarding proof and documentation. If an institution is not required to take attendance, and does not do so, under what circumstances would they have to prove that the student in fact *attended all days*, and what would constitute that proof? Would the issue arise only if all grades are Fs or if it becomes otherwise apparent that the student has ceased attendance without formally withdrawing?

How would enrollment status changes due to an institution's add/drop policy be differentiated from withdrawal? Note that not all schools use a census date; some allow students to drop classes throughout the period.

Consider the following term structure:



A student enrolls in a course that spans the 16 weeks, and in the 2-week course, both 4-week courses, and the overlapping 8-week course that occurs in the middle of the term. If the student drops the 16-week term within the first 2 weeks but completes the rest, there is a very

limited time at the end of the term that he isn't attending, and even if you treat him as withdrawn, he would have been well past the 60% point and would have earned all aid. Even if he dropped the second 4-week class as well as the 16-week class, he would have passed 60%.

Following are some other examples that we would like to know how to treat under the proposed regulations.

Sam
Sam is scheduled to attend all 3 mini-sessions of a combined summer term; the first runs 6 weeks, the second runs 3 weeks, the third runs 6 weeks. Sam finished the first 6-week session, and began the second. He gets ill after one week, misses the next two weeks, and takes an incomplete. He then attends the third session and completes both it and the course for which he took the incomplete.

Sam then enrolls for the 15-week fall semester for classes that all span the full term. He attends the first 2 weeks, has a relapse and is out for 2 weeks, but upon returning is able to catch up and completes the term.

Peter
Peter is scheduled to complete the entire payment period, in which he is registered for courses that span the entire term plus one course that is compressed over the second half of the term. Due to extenuating circumstances he is unable to attend the first week of classes. The school determines that his delayed attendance does not impact his aid amounts. Does that assessment essentially change the days he was actually scheduled to complete, or has he failed to complete "all days" even though he attends through the end of the term?

Jane
In the fall, Jane is scheduled to complete 3 modules that make up the semester. She completes the first 2, but never begins the third. She received Pell Grant and a loan disbursement for the entire term based on attending 3 modules. Under the NPRM, would the school first recalculate her Pell Grant and then apply the return of funds formula?

In the spring, Jane is scheduled to complete 3 modules that make up the semester; immediately after completing the first module, she notifies the school she cannot attend the second module, but will attend the third. The financial aid office's policy in that case is to recalculate both her cost of attendance and revise her aid based on her new enrollment status. Her costs are high enough that even as revised, her loan eligibility would not change when her reduced Pell Grant is taken into account. Does such re-packaging revise the days she is scheduled to attend, or is she considered to have withdrawn from the payment period? If she is considered to have withdrawn, when is the return calculation performed and when must funds be returned? How does the institution determine whether the student has completed 60% of the payment period? ED's *Federal Student Aid Handbook* stresses that 60% completion means passing a *point in time*.

Mary
Mary attends throughout the semester, but at the very end of the term becomes ill and misses the last 6 days of class. She takes all of her finals and submits all of her papers, and receives passing grades in all of her classes. Must she be considered "withdrawn" because she did not complete all days she was scheduled to attend?

Edward
Edward enrolls for fall semester and for an intersession compressed class that occurs after the end of the term but before the beginning of the spring term. The school attaches the intersession class to the fall term (so as to remain in a standard term environment) and imposes no additional costs for the course. Since the school's policy is to consider the intersession class to be part of fall term and does not charge extra for it, no costs are added to the student's cost of attendance. Edward's plans change, and he drops the intersession class near the end of the fall term before the intersession class begins. Has he failed to attend all days which he had been scheduled to attend?

Return of Title IV Funds: Taking Attendance

The Department of Education proposes to revise the rules pertaining to the return of Title IV funds (R2T4) by changing the definition of what constitutes "required to take attendance." The meaning of this term directly impacts determination of a student's withdrawal date.

- Institutions that are required to take attendance by an outside agency must use the last date of attendance according to attendance records, whether the student withdrew officially or unofficially. No other alternatives are available.

- Institutions that are not required to take attendance use the date the student officially withdrew. If the student dropped out without notifying the school (unofficial withdrawal), the institution may use the midpoint of the payment period as the withdrawal date or may choose to establish an earlier or later withdrawal date by documenting a last date of academically-related activity.

The distinction between schools that are required to take attendance and those that are not is established in statute. The law defines the unofficial withdrawal date for institutions in general as "the date that is the mid-point of the payment period for which assistance under this title was disbursed or a later date documented by the institution." For "institutions required to take attendance," the withdrawal date is determined from attendance records.

Since R2T4 was first written into the law, "required to take attendance" has been interpreted to mean a requirement imposed on an institution by an outside agency, as that agency designates. An institution that voluntarily requests its faculty to take attendance has never been encompassed by this phrase. An agency that requires confirmation of attendance but maintains that its requirement does not necessarily translate to establishing attendance records has not been encompassed by this phrase.

Despite the fact that there has been no change to the law, the Department proposes to redefine the regulatory definition of "an institution that *is required* to take attendance" to encompass, in addition to requirements of outside entities:

- institutions that *voluntarily* take attendance;
- circumstances in which some undesignated authority determines that an outside agency or the school itself has a requirement that can only be met by taking attendance or some "comparable" process, even if only for a portion of a program;
- limited subpopulations for whom either an outside entity or the institution itself requires attendance; and
- *limited portions* of payment periods during which an institution that is not otherwise required to take attendance elects to do so, such as the time between the start of classes and a census date.

The law was constructed in recognition of the fact that attendance requirements fall under an institution's academic purview unless the nature of their program subjects them to such a requirement as a condition of some outside authority's approval to operate. The law was deliberate in allowing schools to use the midpoint of the payment period, or a *later* documented date, for students who simply walk away, recognizing that schools have incurred costs as a result of the student's failure to officially withdraw.

The Department's proposal is contrary to both the letter and spirit of the law. Further, imposing an interpretation as to whether an outside agency or the school itself has some requirement to take attendance rather than relying on the agency's or school's own understanding of what it requires is a pretense to impose the taking of attendance by the Department.

The proposed rule further stipulates that "a student in attendance at the end of the limited period… who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance." Taking attendance for a limited period of time, for example to establish class rosters, enrollment status used to calculate Title IV aid, head counts, etc., does not constitute an accurate "attendance record," nor is it the same as requiring attendance in a class. Students might not be "in attendance" on the last day of a limited period of attendance taking for any number of reasons. If the student does not complete the payment period, not only will the school's records have to show when the student stopped attending during the limited period, they will have to show when he or she continued attending at some point in the rest of the payment period. For a school to have to prove that a student who was not in classes on a Friday (the last day of the census period) was still in attendance on the following Monday is again beyond the requirements of the law.

A student who was *not* in attendance at the end of the limited period may at some point after the census period begin the school's official withdrawal process. Under the proposed rule, it does not appear the school would be able to use that process to establish a withdrawal date. Again, that contravenes the law.

The preamble of the NPRM states that "Institutions have the option under § 668.22(c)(3) to use a student's participation in an academically related activity to show that the student continued to be enrolled to a point where the institution was no longer required to take attendance." An option that institutions currently have to voluntarily determine a withdrawal date rather than use the midpoint would essentially become a requirement under the proposed rule.

When would the institution that is otherwise not required to take attendance have to determine that a student who did not attend the last day of class during a limited period of attendance-taking actually withdrew? The *Federal Student Aid Handbook* declares that "Except in unusual instances, the date of the institution's determination that the student withdrew should be no later than 14 days after the student's last date of attendance as determined by the institution from its attendance records. The institution is NOT required to administratively withdraw a student who has been absent for 14 days. However, after 14 days, it is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to be a withdrawal, the end of the 14-day period begins the timeframe for completing a Return calculation."

Mixing and matching radically different procedures (using class attendance only during a limited period at the start of a term, versus a variety of other academically-related events that establish "attendance" at the *institution*, whether or not in a classroom) is confusing and impractical. The proposed rule language did not achieve agreement during the negotiated rulemaking because it is unworkable and an unwarranted intrusion in the institution's own processes.

Moreover, voluntarily taking attendance, whether for a limited period or throughout the payment period, is not an all-or-nothing condition. A student may be taking courses from an academic department that requires attendance due to the nature of its field, and at the same time take courses from other academic divisions of the schools that do not require attendance. Attendance often comes down to a professor-by-professor decision.

We do not object to continuing the current regulatory requirement that if only some students at the institution are subject to required attendance protocols, those students are subject to the last date of attendance rules applicable to institutions that are required to take attendance. However, that condition should be understood to apply only when attendance is required for the entire payment period, for all classes the student enrolls in, and only when imposed by an outside entity.

We object to considering an institution that voluntarily takes attendance as one that is required to take attendance, and we strenuously object to considering any form of attendance confirmation during a limited period of time as subjecting the school to rules applicable to institutions that are required to take attendance. The fact that subregulatory guidance to that effect has been in the *Handbook* is an example of regulation without public input; this guidance should be removed from the *Handbook* immediately.

Verification

Part 668, subpart E

We appreciate the Department's efforts to streamline and simplify the verification process.

668.53 Policies and procedures

Please clarify the meaning of "completing" verification before adjusting for professional judgment, especially in light of the proposal to submit all corrections for reprocessing. For example, would a corrected ISIR have to be received before making the adjustments? That would complicate and delay the whole process. It would make more sense to allow adjustments and any corrections not affected by adjustments to be reported at the same time.

Does proposed paragraph (c) regarding exercise of professional judgment after the completion of verification also apply to institutionally-selected applicants?

How do the requirements of proposed paragraph (c) affect dependency status appeals? If the financial aid administrator wishes to use PJ to make an otherwise dependent student whose application was selected for verification independent, the requirement to complete verification first makes no sense, and may be impossible if the student is estranged from his or her parents.

668.54 Selection of an applicant's FAFSA information for verification

Although we understand that ED believes its edit process more effectively identifies likely error, NASFAA has concerns about the elimination of any cap on verifying system-selected applications (current paragraph (a)(2)). If selection continues to focus primarily or exclusively on Pell-eligible applicants, some institutions (such as community colleges) will bear a disproportionate share of verification. These are also the students and families most easily discouraged from carrying through with verification.

- The current 30% cap is an effective tool for schools to manage the verification process in an economic climate which has increased both the number of applications and Pell Grant recipients.
  - A December 2009 NASFAA survey found that almost half of the institutions responding to the survey (357 out of 729 institutions) had recently implemented the cap to help manage increased verification workloads.
- Past NASFAA Chair Barry Simmons testified before the Advisory Committee that the 30% cap allows schools to alleviate some of the impact complex processes such as verification can have on populations most in need of college access.
  - The Institute for College Access and Success (TICAS) recent report, *After the FAFSA*, indicates that the complexity of the verification process prevents many eligible students from receiving the Pell Grant funds for which they are eligible.

Elimination of the exclusion for recent immigrants (current (b)(2)(iv)) would have a profound impact on this population's ability to access higher education. These students are already

adjusting to a new country; it is unreasonable to also expect them to navigate a complex process that is confusing to non-immigrants.

668.55 Updating information

Will applicants be allowed to project marital status on the FAFSA?

Updating dependency status throughout the *award* year could be quite problematic. Suppose for example that a student attends a full academic year, that is, fall and spring semesters; spring term ended May 30. The student does not enroll for the summer. The student marries mid-June. Would the institution have to reprocess all aid, or is it more reasonable to say that dependency status cannot be updated once the student's enrollment for the award year has ended?

668.56 Information to be verified

We support ED's desire to use what has been learned through experience with edits and through the Quality Assurance program. We agree with limiting verification to those elements most likely to be in error and agree that improving the reliability of application information protects both the Title IV programs and the students to whom aid should be directed. However, we believe ED needs to be cautious in how it achieves these goals. Ensuring data accuracy does reach a point of diminishing returns and a point at which the neediest students can be discouraged from completing the process. Ensuring that funds go to the intended beneficiaries and that students get the full amounts for which they are eligible must be balanced against raising insurmountable barriers for students where they are not justifiable. NASFAA believes that ED must pay equal attention to ensuring that selection of data elements will give a reasonable return.

We request that codes in the ISIR record are uniquely associated with each potential data element to enable schools to automate verification correspondence with students and other processes.

How realistic is it to say that the only item the school might have to verify is AGI? If only AGI is selected and the required verification document is the tax return, wouldn't you then have to look at all other items on the tax return relevant to the FAFSA to make sure you have no conflicting information?

If tax return information was imported from IRS to complete the FAFSA and no changes were subsequently made to those data elements, selection of any of those data elements should be blocked in the edit process.

How will ED ensure that students will not be caught in a verification-selection loop, where correction of one data element triggers selection for another?

668.57 Acceptable documentation

As noted above, ED can determine if applicants import IRS data to FOTW without change. Applicants who use the IRS data retrieval process without modifying the data should not be selected for verification of information appearing on tax returns.

However, if the IRS data retrieval process was not used to complete the FAFSA, is there a way to go back to that application and use the retrieval to make corrections, and thus satisfy verification upon reprocessing?

668.59 Consequences of a change in an applicant's FAFSA information

NASFAA has strong concerns about the elimination of tolerances and the proposed requirement to submit all corrections to ED for processing. The current tolerances allow financial aid administrators to use their judgment on the necessity of reprocessing corrections that will have a minimal impact on student eligibility. Requiring reprocessing of all corrections increases administrative burden and could create unnecessary delays for students.

The TICAS report cited earlier indicates that verification had minimal impact on the Pell eligibility of selected students at community colleges in California. Maintaining the tolerances would help remove procedural hurdles eligible students face to obtain the funds for which they are eligible.

If the Department moves forward with proposed language, will it allow a reasonable margin of error in its selection procedures?

Some references to FFEL seem out of date given the end of that program [proposed 668.59(d)(2)].

668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation

Some references to FFEL and loan certification seem out of date given the end of that program.

668.61 Recovery of Funds

Under (a)(2), how would FWS be treated, given that a student must be paid for hours worked?

Sec. (a)(2)(ii) needs to apply only to interim disbursements, not to disbursements made before selection for verification.

A cross-reference in (a) introductory language to "668.58(a)(2)(ii)(A) and (a)(2)(ii)(A)" appears to be in error, as there are no clauses A and B in that paragraph.

Misrepresentation

Part 668, subpart F

We support strengthening the misrepresentation rules. We believe that strong enforcement steps in cases of true misrepresentation would go a long way in eliminating fraud and abuse and eliminating the need for other measures to combat abuse that arises in the absence of such enforcement.

However we believe ED needs to take care that is does not create a situation where simple human error becomes misrepresentation. We also believe that misinformation by an associated entity other than the institution should not result in undue penalties if the institution took steps to monitor and mitigate such possibilities, and in fact took action upon identifying incidences of misrepresentation.

We support ACE's comments on this issue.

Ability to benefit

668.32

We support ED's proposal regarding equivalents; the basis for comparison is logical. However, there is an inconsistency between the preamble and proposed rule itself. The preamble specifies that hours need to be applicable to an *eligible* program at the institution; the actual regulatory language does not. We believe the proposed rule should conform to the preamble.

We have a concern regarding when the student gains eligibility for Title IV funds. We understand that if grades and credits are not recorded until after the payment period has concluded, the student was not eligible during the payment period, although we believe an argument could be made that a student who proves his or her ability to benefit by passing coursework had that ability all along, and should be eligible on the same basis as social security number, citizenship, and selective service registration.

Even under ED's current interpretation, however, why would treatment of 6 earned credits early in a term with modules or condensed courses not be parallel to taking an ATB test, which results in eligibility for the payment period during which the test was taken? The school could exclude from enrollment status any credits taken within the term prior to the student's gaining eligibility, but even that is inequitable. Under the proposed interpretation, test-takers are given an advantage over students who invest in themselves by taking coursework.

Part 668, subpart J

We support ED's efforts to strengthen ATB testing.

Disbursement for books & supplies

668.164

We generally agree with proposed rules. However, some clarifications with regard to cash management rules may be necessary, per NACUBO's response, which we support.

We would like clarification on one point. Are we correct that if an institution allows students to charge books to an institutional account only if the student authorizes use of Title IV funds to cover books: (1) if the student refuses to do so, the institution would be considered to have made a way of obtaining books available but the student declined to use it; and (2) this would not be considered "coercing" the student to give an authorization.