

## Fact Sheet: Proposed Rules to Protect Students by Strengthening Department of Education Oversight and Monitoring of Colleges and Universities

Today, the Department of Education (Department) released proposed rules to significantly strengthen our ability to conduct robust monitoring and oversight of institutions of higher education (institutions). These proposals would allow the Department to more easily secure financial protection from institutions when they start to exhibit signs of financial struggle and allow us to add conditions to risky institutions' participation in the Federal financial aid programs to ensure greater oversight. The regulations also would provide a more streamlined process for States to approve postsecondary opportunities for students without a high school diploma or its equivalent.

These proposed changes are part of a package of rules that would reinstate and strengthen the gainful employment regulation that holds career training programs accountable for their outcomes and expands transparency for all types of programs. A separate fact sheet covering those other components of the regulatory package related to gainful employment and increased transparency into the financial value of postsecondary programs can be found [here](#).

### Financial Responsibility

Monitoring institutions' financial health is a key responsibility for the Department. Financially risky institutions may be in danger of sudden closures or engage in behavior that prioritizes economic solvency over of what is best for students. Studies by the [State Higher Education Executive Officers Association](#) and the [U.S. Government Accountability Office](#) have shown that institutional closures are disruptive for students, often putting an end to their educational journeys, and that closures often involve insufficient notice to and protections for students. Closures also frequently result in significant losses of taxpayer funds to cover the cost of loan discharges that are not reimbursed by the institution.

Existing regulations limit the Department's ability to respond swiftly and flexibly when problems arise and are insufficient to protect against closures and other behaviors that harm students. The proposed rules would mitigate these risks by creating new mandatory triggering conditions that would alert the Department of a risk. These triggers would allow us to immediately seek financial protection or recalculate the institution's financial responsibility score to determine whether their financial condition has materially weakened. The proposed rule would also establish new discretionary triggers that would result in the Department conducting a case-by-case analysis to see if additional protection is needed. In both cases, the financial protection would most likely take the form of a letter of credit or funds set aside to reimburse students and taxpayers in the event of closure.

The proposed mandatory triggers would be applied to institutions that are:

- Required to pay a debt or other liability that, when added into their financial responsibility score calculation, results in a failure.
- Subject to lawsuits by Federal or State actors or *qui tam* lawsuits where the potential liability, when added into their financial responsibility score, results in a failure.
- At risk of losing access to Federal aid due to having high cohort default rates, failing the 90/10 revenue requirement, or having a significant share of aid in failing gainful employment programs.
- Inflating their financial responsibility scores by making a contribution to the school that results in a passing score followed by a distribution after the fiscal year ends.

- Discouraging Department oversight actions by entering into debt covenants that could cause adverse conditions if the Department places limitations on their access to Federal financial aid.
- Declaring financial exigency or entering a receivership.

The discretionary triggers would be applied to institutions that are:

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

### Administrative Capability

The proposed rules also would strengthen how the Department administers existing statutory requirements that institutions must demonstrate that they are capable of administering the Title IV programs. Institutions that are found not to be administratively capable may be required to provide financial protection or have their participation in the aid programs limited, suspended, or terminated.

The proposed regulations would:

- Require that institutions provide adequate financial aid counseling and financial aid communications to students, including information on the cost of attendance and the sources and types of financial aid available to them.
- Limit an institution from having a principal or affiliate whose misconduct or institutional closure contributed to significant liabilities to the Federal government.
- Strengthen requirements that institutions develop and follow adequate procedures to evaluate the validity of a student's high school diploma.
- Require institutions to provide adequate career services and, where required for completion of a credential or licensure, accessible clinical or externship opportunities.
- Prohibit institutions from engaging in misrepresentations or aggressive and deceptive recruitment.

### Certification Procedures

The proposed certification procedures regulations would strengthen the Department's ability to increase scrutiny of institutions that exhibit concerning signs and allow us to impose conditions to mitigate the risk posed to students and taxpayers. These proposed changes would require that:

- Institutions at risk of closure submit an acceptable teach-out plan or agreement.
- Entities with direct or indirect ownership of a proprietary or private nonprofit institution sign the institution's Program Participation Agreement. This expands on guidance issued by the Department last year to seek these signatures on a case-by-case basis.
- Institutions may not employ, affiliate with, or contract with any individual or entity if the individual or entity has been found to have committed fraud or misconduct involving government funds, or was affiliated with another institution that owes a Title IV liability that is not being repaid.
- Institutions show that their programs meet any required programmatic accreditation and State licensure requirements so that students can obtain employment. And institutions comply with

all State consumer protection laws related to closure, recruitment, and misrepresentations for all States in which they enroll students.

- Institutions do not withhold transcripts or take other adverse actions against a student related to a balance resulting from an error or fraud in the administration of Federal financial aid programs or a balance owed due to the Return of Title IV funds requirements.

### Ability to Benefit

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

The proposed ATB regulations would establish safeguards to ensure State processes are adequate, establish documentation requirements for institutions that wish to enroll ATB students, and establish a verification process to ensure regulatory compliance. The regulations also define an eligible career pathway program. The Department achieved consensus in negotiating these changes and the proposed regulations reflect the consensus language.