HIGHER EDUCATION
Negotiated Rulemaking 2013-2014
Program Integrity and Improvement

This Web page contains information about our rulemaking efforts on program integrity and improvement. For more information about our negotiated rulemaking efforts in 2012-2014, including related Federal Register notices and transcripts from our public hearings, please see our general information page. For more information about negotiated rulemaking in general, please see our question and answer page [www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html].

COMMITTEE MEETINGS INFORMATION

Committee Members

List of negotiators

Meeting Schedule

Session 1: February 19-21, 2014
Session 2: March 26-28, 2014
Session 3: April 23-25, 2014

Sessions will run from 9:00 a.m. to 5:00 p.m.

The meetings will be held at the U.S. Department of Education at: 1990 K Street, N.W., Eighth Floor Conference Center, Washington, DC 20006.

Meetings are open to the public.

SESSION 1 MATERIALS

Materials that the Department provided to the negotiating committee prior to Session 1:

- Proposed agenda
- Proposed protocols
- Issue Paper #1 – Clock to Credit Hour Conversion
- Issue Paper #2 – State Authorization Distance Education
- Issue Paper #3 – State Authorization Foreign Locations
- Issue Paper #4 – Cash Management
- Issue Paper #5 – Retaking Coursework

- Issue Paper #6 – Definition of Adverse Credit for Direct PLUS Loan Eligibility

Materials provided by the Department to the negotiating committee at Session 1:

- The Department's opening remarks provided by Acting Under Secretary Jamienne S. Studley, February 19, 2014

Program Integrity and Improvement Negotiated Rulemaking Committee 2014

Facilitators

Facilitators	Charles Pou Craig Bagemihl

Federal Negotiators

U.S. Department of Education	Carney McCullough U.S. Department of Education Pam Moran U.S. Department of Education

Non-Federal Negotiators

Community of Interest	Primary	Alternate
Students	Chris Lindstrom Higher Education Program Director U.S. Public Interest Research Group	Maxwell John Love Vice President United States Student Association
Legal assistance organizations that represent students	Whitney Barkley Staff Attorney Mississippi Center for Justice	Toby Merrill Director Project on Predatory Student Lending The Legal Services Center Harvard Law School
Consumer advocacy organizations	Suzanne Martindale Staff Attorney Consumers Union	
State attorneys general and other appropriate State officials	Carolyn Fast Special Counsel Consumer Frauds and Protection Bureau New York Attorney General's Office	Jenny Wojewoda Assistant Attorney General Massachusetts Attorney General's Office
Financial aid administrators	David Sheridan Director of Financial Aid School of International & Public Affairs Columbia University in the City of New York	Paula Luff Associate Vice President of Financial Aid DePaul University
Business officers and bursars at postsecondary institutions	Gloria Kobus Director of Student Accounts & University Receivables Youngstown State University	Joan Piscitello Treasurer Iowa State University

Community of Interest	Primary	Alternate
Minority serving institutions	David Swinton President Benedict College	George French President Miles College
Two-year public institutions	Brad Hardison Financial Aid Director Santa Barbara City College	Melissa Gregory Chief Enrollment Services and Financial Aid Officer Montgomery College
Four-year public institutions	Chuck Knepfle Financial Aid Director Clemson University	J. Goodlett McDaniel Associate Provost for Distance Education George Mason University
Private, non-profit institutions	Elizabeth Hicks Executive Director Student Financial Services Massachusetts Institute of Technology	Joe Weglarz Executive Director Student Financial Services Marist College
Private, for-profit institutions	Deborah Bushway Chief Academic Officer and Vice President of Academic Innovation Capella University	Valerie Mendelsohn Vice President Compliance and Risk Management American Career College
Institutional third-party servicers	Casey McGuane Chief Operations Officer Higher One	Bill Norwood Chief Architect and Director Heartland Payment Systems
Distance education	Russ Poulin Deputy Director Research and Analysis WICHE Cooperative for Educational Technologies	Marshall Hill Executive Director National Council for State Authorization Reciprocity Agreements
Business and industry	Dan Toughey President TouchNet	Michael Gradisher Vice President of Regulatory and Legal Affairs Pearson Embanet
Lenders, community banks, and credit unions	Paul Kundert President and CEO University of Wisconsin Credit Union	Tom Levandowski Senior Company Counsel Wells Fargo Bank Law Department Consumer Lending & Corporate Regulatory Division
Accrediting agencies	Leah Matthews Executive Director Distance Education and Training Council	Elizabeth Sibolski President Middle States Commission on Higher Education

U.S. Department of Education
Negotiated Rulemaking
1990 K Street, N.W., 8th Floor Conference Center
Washington, D.C.

Program Integrity and Improvement
February 19-21, 2014, 9:00 a.m. – 5:00 p.m.

AGENDA

Welcome

Introductions

Overview of the Negotiated Rulemaking Process

Review and Adopt Protocols

Petitions for Membership

Overview of the Issues

Formally finalize agenda

Discussion of issues

Next Steps

- Meeting 2: March 26-28, 2014
- Meeting Summary
- Other

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U.S. Department of Education
Negotiating Committee— Program Integrity and Improvement
2014
Organizational Protocols

I. Mission Statement

The .S. Department of ducation has established this negotiated rulemaking committee to develop proposed student financial assistance regulations pursuant to Sec. 4 2 of the Higher ducation Act of 1 6 , as amended (H A).

II. Participation

A. The committee consists of the following members

. The member will participate for the purpose of determining consensus. The alternate will participate for the purpose of determining consensus in the absence of the member. ither the member or an alternate may speak during the negotiations.

C. ith approval by a consensus of the committee, individuals, including specialists, who are invited by a member, may participate in committee or subcommittee meetings as needed and appropriate, but are not members of the committee.

D. The committee may add members. Requests for membership must be approved by a consensus of the committee under such conditions as the committee establishes at the time. New members may begin to participate immediately upon admission to membership.

. Subcommittees may be formed by the committee to address specified issues and to make recommendations to the committee. Subcommittees are not authorized to make decisions for the committee. Subcommittee meetings will be open to any member of the committee and may be held between the meetings of the committee. All committee members will be notified of all subcommittee meetings.

F. pon the initiation by any member and after consultation with the facilitators, the Secretary may remove a member he determines is not acting in good faith in accordance with paragraph VI of these protocols. In such a case, the Secretary will provide an explanation in writing to the member and the committee.

G. The Secretary may remove any member who ceases to be employed by or be associated with the community of interests the individual was chosen to represent.

III. Decision Making

The committee will operate by consensus, meaning that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations about the approach or solution that is proposed for consensus. Absence will be equivalent to not dissenting. All consensus agreements reached during the negotiations will be assumed to be tentative agreements until members of the committee reach final agreement on regulatory

language. □nce final consensus is achieved, committee members may not thereafter withdraw their consensus.

IV. Agreement

A. The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. If consensus is reached on the proposed regulations, the Department will provide a preamble, consistent with the proposed regulations, to the members of the committee for review and comment prior to publication of the proposed regulations. The Department is not required to adopt or respond to the committee members □ comments on the preamble.

□. If the committee reaches a final consensus on all issues, the Department will use this consensus□based language in its proposed regulations, and committee members and the organizations whom they represent will refrain from commenting negatively on the consensus□based regulatory language, except as provided in paragraph IV C.

C. The Department will not alter the consensus□based language of its proposed regulations unless the Department reopens the negotiated rulemaking process or provides a written explanation to the committee members regarding why it has decided to depart from that language. That written explanation will contain a detailed statement of the reasons for altering the consensus□based language and will be provided to the committee members sufficiently in advance of the publication of the proposed regulations so as to allow them a real opportunity to express their concerns to the Department. If the Department alters consensus□based language, it also will identify the changes made subsequent to consensus in the preamble to the proposed regulations, and committee members may comment positively or negatively on those changes and on other parts of the proposed regulations.

V. Committee Meetings

A. The facilitator(s) will maintain a clear and reliable record of tentative and final agreements reached during the negotiation process, as well as discussions of preamble language. The draft meeting summaries will be provided to members, who may share them with others within their community of interests. After review and approval by the committee, this record will be made available to the public.

□. The Department will make every effort to distribute materials to committee members in a timely fashion. To the extent practicable, the Department will provide members with documents for discussion at committee meetings at least seven days in advance of the meetings.

C. A caucus for the purpose of consultation may be requested of the facilitator(s) at any time by any member.

D. The facilitator(s) will be responsible for developing an agenda for all meetings of the committee. This agenda will be developed in consultation with the members of the committee.

□. All committee meetings, but not subcommittee meetings or caucuses, are open to the public.

VI. Safeguards for Members

A. Any member may withdraw from the negotiations at any time without prejudice, by notifying the facilitator(s) in writing.

B. All members and the organizations they represent shall act in good faith in all aspects of these negotiations.

C. Contact with the media, the investment community, and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations. Members will refrain from characterizing the views, motives, and interests of other members during contact with the media, the investment community, and other organizations outside the community of interest represented by the member.

VII. Meeting Facilitation

A. The facilitator(s) will serve at the discretion of the committee, and will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed by the committee.

B. The facilitator(s) will be available to facilitate all meetings of the full committee and, to the extent possible, subcommittee meetings and caucuses.

Issue Paper 1

Program Integrity and Improvement Issues

Issue Clock to Credit Hour Conversion

Statutory Cites None

Regulatory Cites §668.8(k)

Summary of issue Should we clarify and simplify the clock to credit hour conversion regulations?

Interface with State and Federal requirements

Since the publication of the 2010 Program Integrity regulations, the Department has received many questions and comments regarding the clock to credit hour conversion rule. Historically, the main goal of this rule was to ensure that, when institutions with programs that have traditionally measured their academic instruction and progress in clock hours convert those measurements to credit hours, they do not increase the amount of Federal Title IV aid students would qualify for while attending those programs. Section 668.8(l) prescribes the formula that institutions must use to convert affected programs from clock hours to credit hours for the purpose of awarding Title IV funding to students.

The 2010 Program Integrity regulations expanded on that goal in several ways, the first of which was to require that certain programs that have converted to credit hours (in accordance with our conversion formula) nevertheless continue to be treated as clock hour programs for Title IV purposes because of State or Federal approval or licensure rules.

Section 668.8(k)(2)(i) requires that a program measure progress in clock hours for Title IV purposes if State or Federal laws premise program approval or licensure or the authorization to practice the occupation that the student is intending to pursue on measuring the student's progress in clock hours.

Prohibition on conversion based on attendance requirements

The 2010 Program Integrity regulations also expanded on the goal of the clock to credit hour conversion rule by tying attendance requirements to the issue of whether a program should be a clock hour program. Section 668.8(k)(2)(iii) requires a program to be a clock hour program if the institution does not offer all the underlying clock hours for a converted program or if the institution "requires attendance in the clock hours that are the basis for the credit hours." Since implementation of the Program Integrity regulations, this part of the regulations has created a fair amount of confusion and many program participants have questioned the need for it.

Compliance with the definition of a credit hour

The 2010 Program Integrity regulations (in §668.8(k)(2)(ii)) also require that a program that has been converted from clock hours to credit hours nevertheless be considered to be a clock hour program if the resulting credit hours are not in compliance with the definition of a credit hour in 34 CFR 600.2. And, with respect to the conversion formula, §668.8(l)(2) of those regulations specifies that the institution can use a slightly lesser number of hours of instruction in its

conversion formula (than would normally be required) under certain circumstances if the institution's accrediting agency or State agency has not identified any deficiencies with the institution's procedures for determination of credit hours. The regulation specifies that, for this purpose, the definition of a credit hour in 34 CFR 600.2 is to be used.

Comments and □uestions□

Interface with State and Federal requirements

- Should we modify or delete §668.8(k)(2)(i), which requires that a program measure progress in clock hours for Title IV purposes if clock hours are required for State or Federal approval or if completion of clock hours is required to practice the occupation that the student is intending to pursue? (If so, should §668.8 (k)(3) also be modified or deleted as a conforming change?)

- Is use of clock hours for licensing or other governmental approvals or authorizations relevant to determining whether a program may be offered in credit hours for Title IV purposes?

Prohibitions on conversion based on attendance requirements

- Should we delete the requirements in §668.8(k)(2)(iii) for a program to be treated as a clock hour program, notwithstanding that it has converted to a credit hour program, based on an institutional requirement that students attend certain hours of the program? Should the balance of §668.8(k)(2)(iii) be deleted as well, since it is redundant of the requirements of §668.8(l)?

- Should we put the institution and its accrediting agency generally in charge of determining whether a program is measured in clock or credit hours – as long as clock to credit conversions are numerically correct and that the results are used appropriately in the awarding of Title IV aid to students, i.e., as long as the institution complies with our formula in §668.8(l) for converting clock hours to credit hours?

Compliance with the definition of a credit hour

- Should we delete §668.8(k)(2)(ii)? That is, since we establish the formula that institutions must use when they convert a program from clock hours to credit hours (i.e., we specify the maximum number of credit hours that the program can have based on the number of clock hours the institution provides) and, since the definition of a credit hour in 34 CFR 600.2 references our formula when there is a conversion, should we continue to consider a converted program to nevertheless be a clock hour program on the ground that the credit hours in the program are not in compliance with the credit hour definition in 34 CFR 600.2?
- Given our clock hour to credit hour formula and our incorporation of that formula into the definition of a credit hour in 34 CFR 600.2, do we need to continue to reference an accrediting agency's or State agency's findings with respect to possible deficiencies in an institution's determination of the number of credit hours in its converted programs in those instances where an institution uses §668.8(l)(2) to convert clock hours to credit hours?

Issue Paper 2

Program Integrity and Improvement Issues

Issue: State authorization of distance education providers as a component of institutional eligibility

Statutory cites: §§101(a)(2), 102(a)(1), 102(b)(1)(A), 102(c)(1)(A) of the HEA

Regulatory cites: 34 CFR §§600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9

Summary of Issue: What regulations should the Department propose for State authorization of distance education providers and correspondence education providers so that these education providers can be considered to be legally authorized in a State to provide a program of education beyond secondary education and can therefore begin and continue to participate in title IV HEA Federal student aid and other HEA programs?

The regulations under §600.9(c) provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. Furthermore, under §600.9(c), an institution was required to be able to document to the Secretary the State's approval upon request.

On July 12, 2011, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia vacated §600.9(c) on procedural grounds. On August 14, 2012, on appeal, the D.C. Circuit ruled that §600.9(c) was not a logical outgrowth of the Department's proposed rules published at 75 FR 34806 et seq. (June 18, 2010) and directed that the matter be remanded to the Department for reconsideration consistent with the Court's opinion.

Comments and Questions:

- How should the Department address the statutory requirement of legal authorization by a State in the context of distance and correspondence education?
- What should trigger any requirements for demonstration of State authorization by distance and correspondence education providers?
- Should regulations regarding required approvals for institutions providing distance education and correspondence education based upon an institution's operating authority be comparable to those for institutions with physical presence in a State?
- How should reciprocal agreements be treated under the regulations?
- Should blended courses, internships, and joint degree programs be defined and addressed?

Issue Paper

Program Integrity and Improvement Issues

Issue: State authorization of foreign locations of domestic institutions

Statutory cites: §§101(a)(2), 102(a)(1), 102(b)(1)(), 102(c)(1)() of the HA

egulatory cites: 34 CFR §§600.4(a)(3), 600.(a)(4), 600.6(a)(3), 600.

Summary of Issue: Determining what regulations should be developed by the Department for State authorization of foreign locations of domestic institutions.

The HA requires an educational institution to be legally authorized in a State to provide a program of education beyond secondary education in order to participate in the title IV Federal student aid programs, unless an institution meets the definition of a foreign institution. Domestic institutions of higher education often maintain additional locations outside the nited States. Neither the HA nor the State authorization regulations in 34 CFR §§600.4, 600., 600.6, or 600.specifically address State authorization requirements for foreign locations of domestic institutions.

Comments and uestions:

- How should the statutory requirement of legal authorization in a State be applied to foreign locations of domestic institutions?
- ould the proposed regulations apply to the provision of distance education in a foreign location by domestic institutions?
- As part of the State authorization process, would foreign locations of domestic institutions be subect to substantive review by their home State agencies?

Issue Paper 4

Program Integrity and Improvement Issues

Issue Cash Management

Statutory Cites §§484, 48 , and 4 8 of the H A

egulatory Cites 34 CFR Part 668, Subpart

Summary of issues Determining if and how cash management regulations in Part 668, Subpart should be revised to address the allowable timeframes, methods, and procedures for institutions to pay students their Title IV student aid credit balances whether additional consumer end user safeguards should be built into procedures that utilize debit prepaid cards or other financial products for such purposes, to ensure safe, convenient and free access to the full credit balance and if and how regulations should be promulgated that outline required or prohibited marketing behaviors by institutions, their preferred banks, or contractors for bank accounts, cards or other financial products that are offered to students for, or in con unction with, the delivery of Title IV credit balances.

Timely delivery of credit balances

Credit balances are the Title IV student aid funds that remain available to students for non institutional, educational costs, such as living expenses, after institutions have credited their students' accounts with their Title IV student aid funds to pay for institutional charges. Current cash management regulations (34 CFR 668.164 (e) (1) and (2)) require that, after all allowable charges have been paid to an institution using Federal funds, any credit balance remaining must be paid directly to the student within a 14 day period. Institutions can currently satisfy this requirement by

- Issuing a check to the student
- Initiating an electronic fund transfer (FT) to a bank account designated by the student or
- Disbursing the credit balance to the student in cash and receiving a signed receipt in return.

The use of debit cards to disburse credit balances

hen an institution offers to initiate an FT to an institutionally sponsored bank account, some institutions' contracted financial representatives have been offering students the opportunity to utilize a stored value or debit card or other financial product to access credit balances. nder many arrangements, students may withdraw their money at ATMs or use the cards to make purchases at selected establishments. ften, institutions have partnered with third party servicers or other contractors to establish such accounts through a financial partner.

During public hearings held in preparation for these negotiations, some members of the public provided feedback regarding potential negative consequences associated with this method of disbursement. For example, commenters stated that students have complained that the initial

marketing of the debit card is unsolicited and the card bears the institution's insignia, implying that the card is required to secure the student's matriculation. Commenters also voiced concerns that these arrangements may not be in the students' best interests rather, they may be structured to be in the best interests of the institutions and or their partners. thers claimed that their funds were not easily accessible.

Finally, commenters voiced concern that some institutions and or their preferred banks discourage a student's receipt of a credit balance via check or FT to a student's pre existing bank account. The commenters stated that disbursements of funds are often delayed to those accounts, further encouraging use of the institutionally sponsored financial product.

Many students are dependent on these funds to meet living expenses and other costs associated with postsecondary education. These comments raise the question of whether the regulations should be revised to ensure that students can reasonably, conveniently, and reliably access the critical Title IV funds they have been awarded, without fees or other costs.

Comments and uestions

Timely delivery of credit balances

- Should the 14 day period for the disbursement of credit balances be revised?

The use of debit cards or other financial products to disburse credit balances

- Should the regulations provide additional banking protections to the more than million students with campus debit cards?
- Does the concept of active consent and authorization by the student before an account can be established and activated need to be clarified or expanded?
- Should the regulations ensure that students receive convenient and free access to the full amount of their credit balance within the time frame designated, which may include explicitly defining what constitutes convenient access to ATMs or other withdrawal methods?
- Should a debit card or other financial product used to deliver student aid be linked to a bank account in the student's name?
- Should the feasibility of a Federally provided stored use card be explored?
- Should the regulations specify allowable behaviors in cases where Title IV funds and other funds are comingled on a campus debit card?
- ith regard to debit card financial product offerings recommended by institutions to students, should the regulations prohibit specific marketing practices by the institution (or its third party servicer)?
- Should the regulations address the issuance of institutional debit cards or other financial products that depict a co branding of the institution's logo alongside the logo of its preferred bank contractor?

- Should the regulations address the practice of coupling the student's school identification card with a debit/prepaid card or other financial product?

- Should the regulations address revenue-sharing agreements between institutions and their preferred banks if the financial product may be used to deliver Title IV student aid?

- Should the regulations require schools, debit card providers, and other financial product providers to present students with objective and neutral information and options on receipt of Federal student aid payments?

Issue Paper

Program Integrity and Improvement Issues

Issue: Retaking Coursework

Statutory cite: None

Regulatory cite: 668.2

Summary of issue: Determining whether the regulations on retaking coursework should be amended to limit applicability only to undergraduate programs of study and whether the single repetition of previously passed coursework should include all passed coursework if the student's program requires repetition of all coursework to academically progress toward program completion.

The October 2 , 2010, final regulations (FR 66832) amended the definition of "full time student" in §668.2 to allow repeated coursework to count towards a student's enrollment status in term based programs, limited to one repetition of a previously passed course or any repetition of previously passed coursework taken due to a student s failure of other coursework. The Department considers a "passed course" and "passed coursework" to be any course with a grade higher than an "F," regardless of any institutional or program policy requiring a higher qualitative grade or measure to have been considered to pass the course. Subsequent to publication of the final regulations, institutions with medical, dental, and other similar graduate or professional programs contacted the Department to clarify whether the regulatory change applied to programs above the undergraduate level. These institutions noted that the application of the change to these health profession programs would be problematic because the interconnectedness of the coursework required students who failed one course to repeat the entire term's coursework to academically progress in the program. They also pointed out that students in these programs were only eligible for unsubsidized loans and that denial of title IV aid to these students to repeat all coursework would result in students either relying on less desirable private education loans or withdrawing from these programs. The Department has issued guidance indicating that the change to the regulations does not apply to graduate or professional programs, but this is not specifically stated in the regulations.

Comments and uestions

- The current program regulations governing repeated coursework do not explicitly exclude graduate or professional programs from the requirement. Should the regulations be amended to exempt certain graduate or professional programs, or provide a different treatment for such programs?

- Regardless of academic level, should the regulations recognize certain programs that, due to the nature of the curriculum and academic progress standards, require students with one failed course to repeat the entire term's coursework to progress academically in the program?

Issue Paper

Program Integrity and Improvement Issues

Issue: Definition of Adverse Credit for Direct PLUS Loan Eligibility

Statutory cite: §428(a)(1)(A) of the HEA

Regulatory cite: 34 C.F.R.§682.200(c)(1)(vii)

Summary of Issue: The Department makes Direct PLUS Loans to parents of dependent undergraduate students and to graduate and professional students. For any academic year of study, a PLUS loan borrower may borrow up to the difference between the student's cost of attendance and other estimated financial aid for the student. Section 428H(d)(4)(A) of the HEA also provides that a dependent student whose parent is unable to borrow a PLUS loan may receive Direct Unsubsidized loans up to the annual loan limit applicable to an independent undergraduate student.

Under §428(a)(1)(A) of the HEA (which applies to the Direct Loan Program under §454(a)(1) of the HEA), to be eligible to receive a Direct PLUS Loan, the applicant must not have an adverse credit history as determined pursuant to regulations promulgated by the Secretary.

Under the Direct Loan program regulations at 34 CFR §682.200(c)(1)(vii), a PLUS loan applicant is considered to have an adverse credit history if, as of the date of the credit report on the applicant, the applicant:

1. Is 90 days or more delinquent on any debt; or
2. Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt in the five years preceding the date of the credit report.

The regulations provide that the absence of a credit history is not considered to be an adverse credit history and is not a basis for denying a Direct PLUS loan. An applicant with an adverse credit history can receive a PLUS loan if he or she obtains an endorser who does not have an adverse credit history, or if he or she can document to the satisfaction of the Secretary that extenuating circumstances exist.

The definition of adverse credit for Direct PLUS loan eligibility was included as part of the final standards, criteria, and procedures for the first year of the Direct Loan Program's operation which were published on January 4, 1994. Direct Loan program regulations developed through negotiated rulemaking and published on December 1, 1994 incorporated the same adverse credit criteria and added the current provisions which address the status of applicants with no credit history and provide for PLUS loan eligibility based on the borrower's documented extenuating circumstances. As part of final regulations published on November 1, 2013, the Department added a provision to the regulations that provides that the Secretary may determine that extenuating circumstances exist based on documentation that includes, but is not limited to, an

updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than □□00. This provision was added to reflect the Department's procedures and a similar rule in the Federal Family □ducation □oan Program (FF□□P).

Direct P□□S □oan applicants are evaluated at least once each academic year to determine if they have an adverse credit history. A significant number of applicants initiate the process online by completing the Federal Direct P□□S Request for Supplemental Information. The Department receives a credit report on the applicant from the credit reporting organizations. The Department then determines the applicant's P S loan eligibility based on the regulatory definition of adverse credit. Applicants who are denied based on adverse credit are informed of their option to secure a P□□S loan using an endorser who does not have an adverse credit history or to request reconsideration of the adverse credit determination based on extenuating circumstances, and for parent applicants, of the dependent student's ability to borrow an increased amount of Direct □nsubsidized □oan.

In 2010, when Congress changed the H□A to provide that all new student and parent loans would be made under the Federal Direct □oan Program, the Department discovered that the definition of adverse credit history was being applied in a manner that was inconsistent with the Direct □oan regulations and with the regulations and practices followed in the FF□□P. Specifically, for the Direct □oan program, the Department was not counting debts in collection or debts that had been charged off as constituting adverse credit history, as required by the regulations. The Department took steps to address this inconsistency and to ensure that the Direct □oan Program was in compliance with the Department's own regulations. y November 2011, the Department's practices were consistent with the regulations.

Negotiated Rulemaking – Program Integrity and Improvement Committee

Welcoming Remarks by Acting Under Secretary Jamienne S. Studley

Session 1; February 19-21, 2014

- Good morning. My name is Jamienne Studley, and I am the Acting Under Secretary for the U.S. Department of Education. Welcome to the Department and, on behalf of Secretary Duncan, thank you for agreeing to participate in our negotiated rulemaking sessions for Program Integrity and Improvement.

- The work you will do over the coming months is critical to the success of our students, and in turn, the nation as a whole.

- The outcomes of these negotiations have the potential to touch the lives of nearly every American who will pursue postsecondary education.

- The nature of higher education is always changing, and that is why regulatory work like this is so important. Thoughtful rules help institutions, industry and government keep pace with changing demographics and the evolving means of acquiring a higher education credential.

- One of the unique attributes of higher education policymaking at the Department is the use of the negotiated rulemaking process. Under this process, the Department works to develop a Notice of Proposed Rulemaking, or "NPRM" in collaboration with representatives of the parties who will be affected by the regulations.

- This process provides an opportunity to hear from a broad range of interests: from consumer advocates to public and private institutions of higher education to business groups in the initial drafting of a proposed rule. I know there are many alumni of prior negotiations here. As one who worked on neg regs from the beginning, including some that achieved consensus, I can attest to the value of what you are doing.

- Throughout this process, I urge you to keep the most important constituency –students – at the center of our conversations.

- The scope of these negotiations will cover six issues:

Clock to credit hour conversion

- Since the publication of the 2010 Program Integrity regulations when we last regulated on this issue, the Department has received many questions and comments regarding the clock to credit hour conversion rule. These negotiations will help us determine where we can clarify and simplify the current rules to better serve students, institutions, and taxpayers.

State authorization for distance or correspondence education

- Online programs have become more commonplace in recent years and provide another avenue toward expanding educational access, including for non-traditional students and those with disabilities.

- We are revisiting this issue in a negotiating rulemaking session in response to the 2012 D.C. Circuit Court ruling that remanded our previous regulations back to the Department on procedural grounds.

- The issue to be considered here is how to address States' rights, roles and responsibilities under the Higher Education Act to authorize institutions that provide distance education to their residents when an institution is not physically located in the state.

- We are asking you to consider how and in what ways the Department should address this statutory requirement for distance and correspondence education. We look forward to a thorough discussion.

State authorization for foreign locations of U.S. institutions

- Similarly, many of our domestic institutions have foreign locations; however, our current regulations under the HEA do not specifically address such locations. Among the questions for all of you is how to apply statutory requirements to such locations.

Cash management

- As the cost of a college education grows, students are increasingly having to rely on Federal Student Aid and they ought to be ensured of having safe, convenient, and free access to the aid to which they are entitled.

- Our cash management regulations have not been revised for some time and may not adequately reflect current technologies nor accommodate future ones.

- Moreover, students, Members of Congress, the Government Accountability Office (GAO), and others have recently raised concerns about the practice of disbursing Federal Student Aid via debit and prepaid cards and the extent to which such practices are in students' best interests.

- In some instances, we've heard that students incur excessive fees in accessing their funds or face barriers in locating fee-free ATMs.

- This has prompted us to ask you to consider how regulations should be revised to ensure that students can reasonably, conveniently, and reliably access their critical Title IV funds without fees or other costs. Issues for discussion will include timely delivery of students' credit balances and the methods by which this money is disbursed.

Repeated coursework for undergraduate and graduate programs

- Through these negotiations, we also hope to gather information that will help determine whether the regulations on retaking coursework should be amended to limit applicability only to undergraduate programs of study.

- We also hope to gather input on whether a student can receive aid to repeat previously passed coursework if the student's program requires repetition of all of an academic year's coursework after failing a single class to progress toward program completion.

Definition of "adverse credit" for borrowers of the Federal Direct PLUS loan program

- Under program regulations an applicant is considered to have an adverse credit history if a credit report shows an applicant:

    1.) Is 90 days or more delinquent on any debt; or

    2.) Has had a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt in the five years preceding the date of a credit report.

- Under our current regulations, the absence of credit does not constitute "adverse credit."

- What constitutes "adverse credit" was defined in regulations published 20 years ago--in 1994--when credit conditions and consumer markets were different and loans were made through two different programs.

- These conditions have changed. In particular, the President's student loan reform was enacted in 2010. As a result, all Federal student and parent loans are now made under the Direct Loan Program.

- In making the transition to 100% Direct Lending, the Department addressed a discrepancy in how the definition of adverse credit history was being applied in the Direct Loan program in comparison to practices that had been followed in the Federal Family Education Loan Program.

- Specifically, for the Direct Loan program, the Department was not counting debts in collection or debts that had been charged off as constituting adverse credit history, as required by the regulations.

- The Department took steps to address this inconsistency and, by November 2011, the Department's practices were consistent with the regulations, and with practices that had been followed in the Federal Family Education Loan Program.

- Unfortunately, the Department did not clearly communicate this change and it caught many students, parents, and institutions off-guard.

- We sincerely regret that the process was not more transparent.

- We believe this negotiated rulemaking provides an opportunity to revisit our regulations in an open and transparent manner.

- In these negotiations, we recognize the importance of access to higher education, while also acknowledging our legal obligation and duty to determine borrower eligibility as commanded by the statute.

- We look forward to discussing this very important issue and hearing your ideas.

CLOSING

- We recognize that tackling these issues may not be easy. You were chosen because you represent stakeholders who are ultimately affected by these regulations and because you are all recognized as experts in your given fields.

- We believe that your collective knowledge and demonstrated dedication will help us reach consensus on these very important higher education issues.

- Thank you again for lending your expertise and time to this important work.