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DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED-2010-OPE-0004]

RIN 1840-AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations; Technical amendments.

SUMMARY: On October 29, 2010, the Department of Education published in the Federal Register final regulations for improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (October 29, 2010, final regulations). This document makes technical amendments to those regulations in accordance with a court order.

DATES: These regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

The October 29, 2010, final regulations (75 FR 66832) amended the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and the National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs. This document amends 34 CFR 668.71(a), (b), and (c) and removes 34 CFR 668.75 of subpart F of part 668 of the Student Assistance General Provisions in accordance with the remand in Association of Private Sector

Colleges and Universities v. Duncan, 681 F.3d 427 (D.C. Cir. 2012)).

In this case, the D.C. Circuit held that the Department's misrepresentation regulations exceeded the HEA's limits in three respects: by allowing the Secretary to take certain enforcement actions against schools without procedural protections; by prohibiting misrepresentations with respect to subjects that are not set forth in the relevant provisions of the HEA; and by defining the term "misrepresentation" to include statements that have the likelihood or tendency to confuse. The court remanded these provisions for actions consistent with its opinion. These final regulations, therefore, amend or remove the subject regulatory provisions in order to make the Department's regulations consistent with the court's opinion.

Waiver of Proposed Rulemaking, Negotiated Rulemaking, and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon

are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA. Notice and comment to amend current §668.71 and to remove §668.75 are unnecessary because we are merely amending these sections consistent with the D.C. Circuit's decision in Association of Private Sector Colleges and Universities v. Duncan.

For the same reasons, the Secretary has decided to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3) and determined, under section 492(b)(2) of the HEA, 20 U.S.C. 1098a(b)(2), that these regulations should not be subject to negotiated rulemaking.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: September 17, 2013

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Arne Duncan,  
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668 -- STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

AUTHORITY: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

§668.71 [Amended]

2. Section 668.71 is amended by:

A. In paragraphs (a)(1) and (a)(2), adding the words ", if the institution is provisionally certified under §668.13(c)" immediately before the semi-colon.

B. In the second sentence of paragraph (b), removing the words "regarding the eligible institution, including".

C. In paragraph (c), in the second sentence of the definition of "misrepresentation", removing the words "or confuse".

§668.75 [Removed]

3. Section 668.75 is removed.

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