

**Issue Paper 5**  
**Session 1: January 12 – 14, 2016**

**Issue:** Whether to revise the financial responsibility or administrative capability regulations, and whether to add disclosure requirements, to help protect students, the federal government, and taxpayers against potential school liabilities and risks.

**Statutory cite:** §§487(a) and (c), 498 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1094(c), 1099c,

**Regulatory cite:** 34 CFR Part 668 Subpart L, 34 CFR §668.16, 34 CFR §668.43, 34 CFR §668.14

**Summary of Issue:**

To participate in the title IV student aid programs, an institution must demonstrate both financial responsibility and administrative capability. Under the HEA, the Secretary is charged with establishing standards for financial responsibility and administrative capability necessary for the sound administration of the financial aid programs. If an institution violates these requirements, the Secretary may limit, suspend, terminate, or otherwise condition the institution's participation in the title IV, HEA programs.

Questions to be considered by the negotiating committee include:

1. Should the Department take additional steps to protect students and taxpayers from a) potential borrower defense to repayment (DTR) claims, b) liabilities stemming from closed school discharges, and c) other conditions that may be detrimental to students?
  - If so, what conditions, triggering events, metric-based standards, or other risk factors should the Department consider indicative of failing financial responsibility, administrative capability, or other standards?
  - What should the consequences be for a violation? Letter of credit or other financial guarantee? Disclosure requirements and student warnings? Other consequences?
2. If a letter of credit or other financial guarantee is required, how should the amount be determined?