

## Compliance with the 2016 Borrower Defense to Repayment Regulations Questions and Answers

The questions and answers below relate to the [final regulations](#) (the “2016 borrower defense to repayment regulations”) published by the Department in the *Federal Register* on November 1, 2016, concerning borrower defense to repayment and other related matters. 81 Fed. Reg. 75,926. This information supplements the [electronic announcement](#) issued on March 15, 2019, with the subject heading “Guidance Concerning Some Provisions of the 2016 Borrower Defense to Repayment Regulations” and the [electronic announcement](#) issued on May 20, 2019, with the subject heading, “Questions Regarding the Financial Responsibility Provisions of the 2016 Borrower Defense Regulations.” This information supersedes any previous information that may have been provided on the issues below.

Institutions are expected to submit any necessary supplemental reporting as a result of any information included in this Q&A document within 10 calendar days of the date that the information was posted. The Department anticipates updating these questions and answers on an ongoing basis.

### New Financial Responsibility Triggers and Reporting, 34 C.F.R. § 668.171

- *Public Institutions and Reporting*

#### **Q1: Do the reporting requirements in 34 C.F.R. § 668.171(h) apply to public institutions?**

**A1:** Yes, the reporting requirements in the 2016 borrower defense to repayment regulations apply to public institutions, with certain exceptions. Although public institutions of higher education are considered to be financially responsible under 34 C.F.R. § 668.171(i), the reporting requirements in 34 C.F.R. § 668.171(h) do not distinguish between institutions based on their public or private nature or their tax status, and they exist independently of any determination of whether the reported actions or events are failures of financial responsibility under 34 C.F.R. § 668.171. As a result, the reporting requirements apply to all schools participating in the Title IV, HEA programs.

Some of the events, conditions, or situations described in the financial responsibility standards (or “triggers”) added by the 2016 borrower defense to repayment regulations describe trigger events that are not relevant to some institutions. Such events, conditions, or situations include the withdrawal of owner’s equity, 34 C.F.R. § 668.171(c)(1)(v), and stock exchange or U.S. Securities Exchange Commission (SEC) actions for publicly traded institutions, 34 C.F.R. § 668.171(e). As a result, institutions that are not subject to such triggers are not required to report those events unless the event occurs with a related party that is included in the public institution’s annual audit submission to the Department pursuant to 34 C.F.R. § 668.23(d).

June 3, 2019

- *Debts and Liability Triggers*

#### **Q2: Are institutions required to report all debts and liabilities under 34 C.F.R. § 668.171(c)(1)(i) & (h)(1)(i), such as those arising from settlements reached prior to legal action?**

**A2:** 34 C.F.R. § 668.171(c)(1)(i) only applies to debts and liabilities “arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement.” Such judicial and administrative proceedings include those initiated by a government entity. All settlements fall under this requirement. The reporting requirement in 34 C.F.R. § 668.171(h)(1)(i) follows the same principles.

June 3, 2019

**Q3: Does the category of “Other Litigation” described in 34 C.F.R. § 668.171(c)(1)(ii) and referenced in 34 C.F.R. § 668.171(h)(1)(ii) include all lawsuits meeting the requirements regardless of their subject matter or amount? Is there any claim type or materiality limitation to the requirement?**

**A3:** 34 C.F.R. § 668.171(c)(1)(ii) and the corresponding reporting requirement in 34 C.F.R. § 668.171(h)(1)(ii) do not limit the types of litigation that must be reported by the amount at issue or the type of claim that is brought. These requirements apply in every instance where an institution “is being sued in an action brought on or after July 1, 2017.” For example, lawsuits related to personal injury claims or fraud must be reported under 34 C.F.R. § 668.171(h)(1)(ii). The language of the regulation does not include any materiality threshold for litigation that must be reported under this requirement. Therefore, all litigation, regardless of the type of legal action or the size of the claim, must be reported.

June 3, 2019