

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

**34 CFR Subtitles A and B**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866, “Regulatory Planning and Review.” The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the regulatory actions we plan to take.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Other questions or comments on this agenda should be directed to Leslie Carter, Program Specialist, Levon Schlichter, Attorney, or Lynn Mahaffie, Assistant General Counsel, Division of Regulatory Services, Department of Education, Room 6C128, 400 Maryland Avenue SW, Washington, DC 20202–2241; telephone: Leslie Carter (202) 401–5939, Levon Schlichter (202) 453–6387, or Lynn Mahaffie (202) 453–7862. If you are deaf, hard of hearing, or have a speech disability and wish to access

telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:** Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in the Spring and Fall of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).

- A reference to where a reader can find the current regulations in the Code of Federal Regulations.

- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED’s Principles for Regulating listed in its regulatory plan (78 FR 1361, published January 8, 2013), ED is committed to regulations that improve the quality and equality of services it provides to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here. Dates of future regulatory actions are subject to revision in subsequent agendas.

*Electronic Access to This Document:* The entire Unified Agenda is published electronically and is available online at [www.reginfo.gov](http://www.reginfo.gov).

**Elizabeth Brown,**  
General Counsel.

**OFFICE OF POSTSECONDARY EDUCATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
286 .....	Gainful Employment ( <b>Reg Plan Seq No. 45</b> ) .....	1840–AD57
287 .....	Factors of Financial Responsibility ( <b>Section 610 Review</b> ) .....	1840–AD64

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**OFFICE OF POSTSECONDARY EDUCATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
288 .....	Borrower Defense ( <b>Completion of a Section 610 Review</b> ) .....	1840–AD53
289 .....	Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10) ( <b>Completion of a Section 610 Review</b> ).	1840–AD55
290 .....	Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control ( <b>Completion of a Section 610 Review</b> ).	1840–AD69

**DEPARTMENT OF EDUCATION (ED)**

Office of Postsecondary Education (OPE)

Proposed Rule Stage

**286. Gainful Employment [1840-AD57]**

*Regulatory Plan:* This entry is Seq. No. 45 in part II of this issue of the Federal Register.

RIN: 1840-AD57

**287. Factors of Financial Responsibility (Section 610 Review) [1840-AD64]**

*Legal Authority:* 20 U.S.C. 1094 and 1099c; sec. 4 of Pub. L. 95-452; 92 Stat. 1101-1109

*Abstract:* The Secretary plans to amend regulations in subpart L of 34 CFR part 668 on institution and program eligibility under the HEA, including regulations associated with the standards of financial responsibility an institution must maintain in order to be eligible to participate in programs under title IV of the HEA.

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, Phone: 202 453-7535, Email: gregory.martin@ed.gov.

RIN: 1840-AD64

**DEPARTMENT OF EDUCATION (ED)**

Office of Postsecondary Education (OPE)

Completed Actions

**288. Borrower Defense (Completion of a Section 610 Review) [1840-AD53]**

*Legal Authority:* 20 U.S.C. 1082(a)(5), (a)(6); 20 U.S.C. 1087(a); 20 U.S.C. 1087e(h); 20 U.S.C. 1221e-3; 20 U.S.C. 1226a-1; 20 U.S.C. 1234(a); 31 U.S.C. 3711

*Abstract:* The Secretary published final regulations in 34 CFR parts 30, 668, 674, 682, 685, and 686 that determine what acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan and Federal Family

Education Loan Programs and specify the consequences of such borrower defenses for borrowers, institutions, and the Secretary. Further, the regulations prohibit the mandatory use of class-action lawsuits and pre-dispute arbitration agreements for matters pertaining to borrower defense claims by schools receiving title IV assistance under the Higher Education Act of 1965, as amended (HEA).

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	07/13/22	87 FR 41878
NPRM Comment Period End.	08/12/22	
Final Action .....	11/01/22	87 FR 65904

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C-232, Washington, DC 20202, Phone: 202 453-5970, Email: tamy.abernathy@ed.gov.

RIN: 1840-AD53

**289. Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10) (Completion of a Section 610 Review) [1840-AD55]**

*Legal Authority:* 20 U.S.C. 1085, 20 U.S.C. 1088; 20 U.S.C. 1091, 20 U.S.C. 1092; 20 U.S.C. 1094, 20 U.S.C. 1099a-3; 20 U.S.C. 1099c

*Abstract:* To reflect changes to the HEA made by the American Rescue Plan Act, The Secretary published final regulations that amend the Student Assistance General Provisions (34 CFR 668.28 Non-Title IV revenue) governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	10/04/21	86 FR 54666
NPRM .....	07/28/22	87 FR 45432
Merged With 1840-AD69.	09/29/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, Phone: 202 453-7535, Email: gregory.martin@ed.gov.

RIN: 1840-AD55

**290. Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control (Completion of a Section 610 Review) [1840-AD69]**

*Legal Authority:* 20 U.S.C. 1001-1002; 20 U.S.C. 1070a, 1070a-1, 1070b, 1070c-1, 1070c-2, 1070g; 20 U.S.C. 1085, 1087aa-1087hh, 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099b and 1099c; 42 U.S.C. 2753; 20 U.S.C. 1085, 20 U.S.C. 1088; 20 U.S.C. 1091, 20 U.S.C. 1092; 20 U.S.C. 1094, 20 U.S.C. 1099a-3; 20 U.S.C. 1099c; 20 U.S.C. 1091; 20 U.S.C. 1099c

*Abstract:* This action merges the following three prior RINs: RIN 1840-AD54 Pell Grants for Prison Education Programs; 1840-AD55 Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); 1840-AD66 Change in Ownership and Change in Control.

For Pell Grants for Prison Education Programs, the Consolidated Appropriation Act, 2021 defines prison education programs for purposes of Pell Grant eligibility. The Secretary published final regulations regarding correctional facilities and eligible institutions of higher education seeking to establish eligibility for the Pell Grant program.

For 90/10, to reflect changes to the HEA made by the American Rescue Plan Act, the Secretary published regulations that amend the Student Assistance General Provisions (34 CFR 668.28 Non-Title IV revenue) governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

For Changes in Ownership, the Secretary published regulations that amend provisions regulations in 34 CFR 600.31 on institution and program eligibility under the HEA, including 34 CFR 600.31, that are associated with changes in institutional ownership resulting in a change in control.

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	07/28/22	87 FR 45432
Final Action .....	10/28/22	87 FR 65426

*Regulatory Flexibility Analysis Required: No.*

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*RIN:* 1840-AD69

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