**Issue Paper 3**

**Session 1: November 13-15, 2017**

**Issue:** Financial Responsibility and Administrative Capability

**Statutory cites:** §§487(a) and (c), and 498, of the Higher Education Act of 1965, as amended

**Regulatory cites:** 34 CFR 668.14, 668.16, 668.43, and part 668 subpart L

**Summary of issue:**

Under the HEA, the Secretary establishes standards for financial responsibility and administrative capability that institutions must meet to participate in the Federal student financial aid programs authorized under title IV. If an institution violates these requirements, the Secretary may limit, suspend, terminate, or otherwise condition the institution’s title IV participation.

Under the Department’s current regulations at 34 CFR 685.206(c), borrower defense discharges are granted in instances where it is determined that an institution has committed a violation of applicable State law. When the Department discharges a borrower’s loans, the taxpayer assumes the costs of that discharge. This raises the question of to what extent the institution is liable for the costs to the Department/taxpayer of those violations and the resulting discharges. However, allegations of institutional misconduct may increase the likelihood that an institution will close, not have sufficient resources to pay outstanding or forthcoming borrower defense claims, or both. Therefore, if the Department decides to promulgate regulations requiring institutions to bear financial responsibility for borrower defense claims, it may also be necessary to require that institutions post sureties in some instances to ensure that the taxpayers are not solely responsible for borrower defense loan discharges stemming from the institution’s unlawful acts.

Questions for consideration by the committee:

* Under what conditions or to what extent should institutions incur liability for reimbursement of borrower defense claims?
* Should the Department require the posting of sureties by institutions that are determined to be at risk for closure and/or borrower defense claims? Which metrics should be used when making these determinations?
* Should the Department take additional steps to protect taxpayer interests?