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# Institutional Eligibility

*This chapter discusses the three types of institutions that are eligible to participate in the Federal Student Aid (FSA) programs. If circumstances change and a participating school no longer qualifies as an eligible institution, it must notify the Department (see Chapter 5) and carry out the closeout procedures described in Chapter 9 of this Volume.*

A school that wishes to participate in the FSA programs must demonstrate that it is eligible to participate before it can be certified for participation. A school must apply to and receive approval from the Department of its eligibility to participate. Some schools apply only for a designation as an eligible institution (they do not seek to participate) so that students attending the school may receive deferments on FSA program loans, or be eligible for the HOPE/Lifetime Learning Scholarship tax credits or other non-FSA programs that require that the school be FSA-eligible. The same application is used to apply for both eligibility and certification for participation (see Chapter 2).

## TYPE & CONTROL

### *Type: the three definitions of eligible institutions*

The regulations governing institutional eligibility define three types of eligible institutions—institutions of higher education, proprietary institutions of higher education, and postsecondary vocational institutions. Under the three definitions, a school is eligible to participate in all the FSA programs provided the school offers the appropriate type of eligible program (see chart on next page). This section covers the key elements of the three definitions, giving special attention to those requirements that affect the definition of an eligible program.

Although the criteria for the three types of institutions differ somewhat, note that it is possible for some programs at a public or private nonprofit institution to meet the requirements for a postsecondary vocational institution.

### *Institutional control*

The *control* of an institution distinguishes whether the institution is public or private, nonprofit or for-profit. Under the institutional definitions, an *institution of higher education* or a *postsecondary vocational institution* can be either public or private, but is always nonprofit. A *proprietary institution of higher education* is always a private, for-profit institution.

## CHAPTER 1 HIGHLIGHTS

- Three definitions of eligible institutions
  - institution of higher education
  - proprietary institution of higher education
  - postsecondary vocational institution
- Basic requirements
  - Legal authorization by a state
  - Accreditation (and alternatives)
  - Admissions standards (high school diploma, recognized equivalent, homeschooling)
- Two-year rule for new proprietary or vocational schools
- Factors leading to loss of eligibility
  - Limitations
  - Bankruptcy or crimes involving FSA funds
- Criteria to participate in TEACH Grant programs
- Applying as an eligible nonparticipating school
- Withdrawals
- Program Participation Agreement


## Related information

- Applying to participate, *New School Guide*
- Eligibility of ability-to-benefit students, home-school students, and correspondence students—Volume 1, Chapter 1
- Eligible program—Volume 2, Chapter 2
- Closeout procedures, Volume 2, Chapter 9.

## Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter see the FSA Assessment module for "Institutional Eligibility," at:  
[ifap.ed.gov/qahome/qaassessments/institutionalelig.html](http://ifap.ed.gov/qahome/qaassessments/institutionalelig.html)

## Type and Control of Eligible Institutions

<p style="text-align: center;"><i>Institution of Higher Education</i></p> <p style="text-align: center;">A public or private nonprofit educational institution located in a state</p>	<p style="text-align: center;"><i>Proprietary Institution of Higher Education</i></p> <p style="text-align: center;">A private, for-profit educational institution located in a state</p>	<p style="text-align: center;"><i>Postsecondary Vocational Institution</i></p> <p style="text-align: center;">A public or private nonprofit educational institution located in a state</p>
<p>Program offered:</p> <ol style="list-style-type: none"> <li>(1) Associate, bachelor's, graduate, or professional degree, or</li> <li>(2) At least a two-year program that is acceptable for full credit toward a bachelor's degree, or</li> <li>(3) At least a one academic year training program that leads to a certificate or other nondegree recognized credential and prepares students for gainful employment in a recognized occupation.</li> </ol> <div style="text-align: center;">  </div>	<p>The institution must</p> <ol style="list-style-type: none"> <li>(1) provide training for gainful employment in a recognized occupation, or</li> <li>(2) have provided a program leading to a baccalaureate degree in liberal arts continuously since Jan. 1, 2009 (with continuous regional accreditation since Oct. 1, 2007 or earlier).</li> </ol> <p>Programs offered: must meet the criteria of at least one category below.</p> <ol style="list-style-type: none"> <li>(1) Provides at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. May admit students without an associate degree or equivalent.</li> <li>(2) Provides at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. Must be a graduate/professional program, or must admit only students with an associate degree or equivalent.</li> <li>(3) Provides at least a 10-week (instructional time) undergraduate program of 300–599 clock hours. Must admit at least some students who do not have an associate degree or equivalent, and must meet specific qualitative standards. Note: These programs are eligible only for Direct Loan participation.</li> </ol>	<p>The institution must provide training for gainful employment in a recognized occupation.</p> <p>Programs offered must meet the criteria of at least one category below.</p> <ol style="list-style-type: none"> <li>(1) Provides at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. May admit students without an associate degree or equivalent.</li> <li>(2) Provides at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. Must be a graduate/professional program, or must admit only students with an associate degree or equivalent.</li> <li>(3) Provides at least a 10-week (instructional time) undergraduate program of 300–599 clock hours. Must admit at least some students who do not have an associate degree or equivalent, and must meet specific qualitative standards. Note: These programs are eligible only for Direct Loan participation.</li> </ol>

All three institutional types may also provide a comprehensive transition & postsecondary program for individuals with intellectual disabilities.

“Two-Year Rule” (applicable to proprietary and postsecondary vocational institutions) — Legally authorized to give (and continuously has been giving) the same postsecondary instruction for at least two consecutive years.



## BASIC CRITERIA FOR ELIGIBLE INSTITUTIONS

To be eligible, an institution must:

- be *legally authorized* by the state where the institution offers postsecondary education to provide a postsecondary education program,
- be *accredited* by a nationally recognized accrediting agency or have met the alternative requirements, if applicable, and
- *admit as a regular student* only individuals with a high school diploma or its recognized equivalent, or individuals beyond the age of compulsory school attendance in the state where the institution is located.

These requirements are discussed in the following sections.

## LEGAL AUTHORIZATION BY A STATE

Generally, an eligible institution must be located in a state. A school is physically located in a state or other instructional site if it has a campus or instructional site in that state. There are exceptions:

- Institutions of higher education in the Federated States of Micronesia and the Republic of the Marshall Islands are eligible for purposes of the Federal Pell program.
- Institutions of higher education in Palau are eligible for purposes of the Federal Pell, FSEOG, and FWS programs.
- Foreign schools are eligible to participate in the Direct Loan program, subject to the rules for foreign schools in 34 CFR 600.51-57.

To qualify as an eligible institution under any of the three institutional definitions, a school must be legally authorized by the state in which it offers an educational program to provide the program.

A school is legally authorized by a state when it is established *by name* as an educational institution by a state through a charter, statute, constitutional provision, articles of incorporation, or other action issued by an appropriate state agency or state entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate. The school must comply with any applicable state approval or licensure requirements, except in cases where the state exempts the school from any of its requirements based upon the school being in operation for at least 20 years or the school's accreditation by one or more accrediting agencies recognized by the Department.

If a school has not been established *by name* as an *educational institution* but has been established by a state on the basis of an authorization to conduct business in the state or to operate as a nonprofit charitable organization, the school must be approved or licensed *by name* by the state to offer programs beyond secondary education, including programs leading to a degree or certificate. Such a school may not be exempted from the state's approval or

## Definitions of eligible institutions

34 CFR 600.4, 600.5, and 600.6

### Nonprofit institution

A school that is

- owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit any private shareholder or individual,
- legally authorized to operate as a nonprofit organization by each state in which it is physically located, and
- determined by the Internal Revenue Service (IRS) to be eligible for tax-deductible contributions in accordance with the IRS Code (26 U.S.C. 501(c)(3)).

### State defined

"State" includes not only the 50 states, but also American Samoa, Puerto Rico, the District of Columbia, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands.

Authorization by a state 34 CFR 600.4(a)(1)

### Foreign Schools Eligible for Direct Loan Program

In general, by law, a foreign school can participate in the Direct Loan Program if the foreign school is comparable to an institution of higher education (as defined earlier in this section) and has been approved by the Department.

Additionally, the regulations set out specific requirements for foreign medical schools, foreign veterinary schools, and foreign nursing schools.

You can find additional information about foreign school eligibility in "The Student Financial Aid Handbook for Foreign Schools" on the IFAP website (<http://ifap.ed.gov>).

### State authorization & alternatives

The criteria for a school to be considered legally authorized by a state were published in the Federal Register, October 29, 2010, as new section 34 CFR 600.9, effective 7/1/2011. GEN-11-05 (March 17, 2011) provided further guidance on state authorization.



State process for complaints

For a school to be legally authorized by a state, the state must have a process to review and appropriately act on complaints concerning the school, including enforcing applicable state laws. Note that schools must provide the contact information for filing complaints with the state to students and prospective students. This requirement applies to institutions otherwise exempt as religious institutions. (See the consumer information requirements in Section 2.6.2)

State authorization & distance education

See Chapter 2 for requirements for state authorization for distance education programs.

Definition of Indian tribe

The Institutional Eligibility regulations (see 34 CFR 600.9) incorrectly cite 25 USC 1802(2); this will be corrected in the Federal Register to— 25 USC 1801(a)(2).

licensure requirements based on accreditation, years in operation, or other comparable exemption.

The regulations list several exceptions to the state authorization requirement—

- 1. the federal government has authorized the school by name to offer educational programs beyond secondary education.
- 2. an Indian tribe (as defined in 25 USC 1801(a)(2)) has authorized the school by name to offer educational programs beyond secondary education, provided that the school is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning a school and enforces applicable tribal requirements or laws.
- 3. the school is exempt from state authorization as a religious institution under the state constitution or by state law (see sidebar for regulatory definition).



A school must have evidence that it has the authority to operate in a state at the time of the school’s certification to participate in the FSA programs. For more information on applying for participation in the FSA programs, see the *New School Guide*.

How different types of schools meet state authorization requirements		
Legal Entity	Entity Description	Approval or Licensure Process
Educational Institution	A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, articles of incorporation, or other action issued by an appropriate State agency or State entity as an educational institution authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.	The institution must comply with any applicable State approval or licensure process and be approved or licensed by name, and may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.
Business	A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
Charitable Organizations	A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.	The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name. An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.
Note: The chart does not take into account requirements related to state reciprocity or federal, tribal, and religious institutions that are exempt from these requirements.		

## ACCREDITATION

Generally, a school must be accredited or preaccredited by a nationally recognized accrediting agency or association (both referred to here as agencies) to be eligible.

Except as provided below, a school must be accredited by an agency that has the authority to cover all of the institution's programs. An agency such as this is referred to as the school's *primary accrediting agency*. A school can have only one primary accreditor.

A school may also be accredited by one or more programmatic accrediting agencies. A *programmatic accrediting agency* is one that accredits only individual educational programs that prepare students for entry into a profession, occupation, or vocation.

If a school is seeking to change primary accreditors it must first provide the Department (and the agencies) all materials documenting the reasons and causes for making the change. (Information on changes in accreditation can be found in *Chapter 5*.)

### Alternatives to regular accreditation

The law provides two statutory alternatives to accreditation by a recognized accrediting agency. First, a public or private nonprofit institution may be preaccredited by an agency or association that has been approved by the Department to grant such preaccreditation. Second, public postsecondary vocational educational institutions may be eligible for FSA funds if accredited by a state agency that the Department determines to be a reliable authority.

### Primary accreditor

The primary accreditor typically is an accrediting agency whose scope is institution-wide rather than only programmatic. A participating institution must advise the Department which accrediting agency it wants to serve as its primary accrediting agency for the purpose of FSA eligibility. If a school offers only programs of a singular nature, the school's primary accreditor may be an agency that accredits only those specific educational programs.

### Dual accreditation

If a school is accredited by two agencies at the same time, the school must designate which agency's accreditation will be used in determining institutional eligibility for FSA funds and must inform the Department via the E-App. Further, the school must provide to the Department (and to both agencies) all materials documenting the reasons and causes for dual accreditation before the school adds the additional accreditation. See *Chapter 5* for more on changes in accreditation and loss of eligibility.

## ADMISSIONS STANDARDS

An eligible institution may admit as regular students only persons who have a high school diploma or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the state in which the school is located. (Admissions standards also play a role in student eligibility, as discussed in *Volume 1, Chapter 1*.)

## Definition of religious institution

An institution that

- is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and
- awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

34 CFR 600.9(b)(2)

## Nationally recognized accrediting agency or association

An accrediting agency or association which the Department has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions in 34 CFR Parts 602 and 603.

## Obtaining a list of recognized accrediting agencies

The Department periodically publishes a list of nationally recognized accrediting bodies in the Federal Register, based on criteria given in 34 CFR Part 602. The list of accrediting agencies recognized for FSA purposes can be found on the Department's website at:

[www.ed.gov/admins/finaid/accred/index.html](http://www.ed.gov/admins/finaid/accred/index.html)

The list of accrediting agencies recognized for their preaccreditation categories is in section 7. Information about national recognition of state approval agencies is in Section 10.

## Preaccredited:

A status granted by a nationally recognized accrediting agency or association to a public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Institutions of Higher Education (IHE)

34 CFR 600.4(a)(5)(i)

Postsecondary Vocational Institutions (PVI)

34 CFR 600.6(a)(5)(i)

## Alternatives to accreditation

Institutions of Higher Education (IHE)

34 CFR 600.4(a)(5)(i)

Postsecondary Vocational Institutions (PVI)

34 CFR 600.6(a)(5)(ii)

## Admissions standards

34 CFR 600.4(a)(2), 600.5(a)(2), 600.6(a)(2)

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### Checking validity of high school diplomas

A school must evaluate the validity of a student's high school completion if the school or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. This is discussed in detail in Volume 1 (Student Eligibility), Chapter 1.

34 CFR 668.16(p)

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### Regular student

A person who is enrolled (or is accepted for enrollment) in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential. Note that if an individual is not yet beyond the age of compulsory school attendance in the state in which the school is physically located, the school may only enroll the individual as a "regular student" if he or she has a high school diploma or its equivalent.

34 CFR 600.2

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### Dual enrollment at high school

Eligible institutions may dually enroll secondary students as regular students. Higher Education Act of 2008

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### Admissions standards as a student eligibility issue

To be eligible for FSA funds, a student who does not have a high school diploma or its recognized equivalent must not only be beyond the age of compulsory attendance, but must also meet the criteria for homeschooled students or demonstrate "ability-to-benefit." See *Volume 1, Chapter 1*.

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### Related requirements

A school may not deny readmission to a service member of the uniformed services for reasons relating to that service. See *Chapter 3* for more information.

### High school diploma

A high school diploma is a document recognized by the state in which the high school is located. Unless required by its accrediting or state licensing agency, the school is not required to keep a copy of a student's high school diploma or GED (the recognized equivalent of a high school diploma, *see below*). Rather, the school may rely on the student's certification (including that on the FAFSA) that he or she has received the credential and a copy of the certification must be kept on file. This certification need not be a separate document. It may be collected on the school's admissions application. The school may also require the student to provide supporting documentation.

### Recognized equivalent of a high school diploma

Generally, a recognized equivalent of a high school diploma is either a GED or a state certificate (received after the student has passed a state-authorized test) that the state recognizes as being equivalent to a high school diploma. However, the regulations also recognize two special cases that are equivalent to a high school diploma:

- An academic transcript showing that the student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree.
- For a student who is seeking enrollment in a program of at least the associate degree level, documentation showing that the student has excelled academically in high school and has met the formalized written admissions policies of the postsecondary school.

### Homeschooled students & compulsory school attendance

The Department considers that a homeschooled student is beyond the age of compulsory school attendance if the state in which the eligible institution is located does not consider the student truant once he or she has completed a homeschool program.

For instance, if your state requires children to attend school until age 17, you may admit as a regular student a homeschooled student who completes the secondary curriculum at age 16 if your state

- would not consider the student truant, and
- would not require that student go back to high school or continue a home-school education until age 17.

You may rely on a homeschooled student's self-certification that he or she completed secondary school in a homeschool setting, as discussed in *Volume 1, Chapter 1*, under "Academic Qualifications."

### Preparatory programs for students without high school diploma or equivalent

A school that admits students without a high school diploma or its recognized equivalent (except homeschooled students) must make available to its students a program that has proven successful in assisting students in obtaining the recognized equivalent of a high school diploma.



For example, such a program might assist a student in obtaining a General Educational Development (GED) test or a state certificate received by a student after the student has passed a state-authorized examination that the state recognizes as the equivalent of a high school diploma. Such programs include preparatory programs that are conducted by state and local secondary school authorities, as well as programs for which the school has documentation that statistically demonstrates success. The school must provide information about the availability of the preparatory program to affected students.

The program does not have to be provided by the school itself, and the school is not required to pay the costs of the program. The program must be offered at a place that is convenient for the students and the school must take reasonable steps to ensure that its students have access to the program, such as coordinating the timing of its program offerings with that of the preparatory program.

The law does not require a school to verify that a student is enrolled in a preparatory program or to monitor the student's progress in the program. A student admitted based on his or her ability to benefit who does not have a high school diploma or its recognized equivalent is not required by law to enroll in a program, but the school may make this an admission requirement.

A student may not receive FSA funds for the program, although he or she may be paid for postsecondary courses taken at the same time as the preparatory coursework, including remedial coursework at the secondary level or higher.

## **“TWO-YEAR” RULE FOR NEW PROPRIETARY OR VOCATIONAL SCHOOLS**

To be eligible as a proprietary institution or a postsecondary vocational institution, a school must be legally authorized to give (and have continuously been giving) the same postsecondary instruction for at least two consecutive years prior to its application. The educational program(s) offered must remain substantially the same in length and subject matter, except for changes made because of new technology or requirements of other federal agencies. A school subject to the two-year rule may not award FSA funds to a student in a program that is not included in the school's approval documents.

If a school is subject to the two-year rule, during the school's initial period of participation in the FSA programs the Department will not approve additional programs that would expand the institution's eligibility. An exception would be considered if the school demonstrates that the program has been legally authorized and continuously provided for at least two years prior to the date of the request.

A branch campus of an eligible proprietary institution or postsecondary vocational institution seeking status as a main campus or freestanding institution is subject to the two-year rule. A branch campus must be designated as such by the Department for two years after certification as a branch campus before the branch can seek certification as a main or freestanding school.

## **Limitation on students admitted without HS diploma or equivalent**

A school that admits students who do not have a high school diploma nor its recognized equivalent has some additional considerations. A waiver of this limitation is possible for some schools. See the discussion under *Limitation on students without HS diploma or equivalent*.

## **Students without high school diploma or equivalent: related topics**

Remedial coursework, ability to benefit tests, students with intellectual disabilities, see *Volume 1, Chapter 1*.

Transition programs for students with intellectual disabilities are discussed in *Chapter 2*.

## **Branch campus**

A branch campus is a location of a school that is geographically apart and independent of the main campus of the school. A location is considered to be independent of the main campus if the location:

- is permanent in nature;
- offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- has its own faculty and administrative or supervisory organization; and
- has its own budgetary and hiring authority.

## **Citations**

Branch campus  
34 CFR 600.2 and 600.8  
Additional location  
34 CFR 600.32

### Notifying ED of changes to school's E-App information

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted Electronic Application (E-App) (which deal with enrollment thresholds in these areas), the school must notify the Department via the E-App (see *Chapter 5*). The Department will advise the school of its options, including whether the school might be eligible for a waiver. (Waivers are available for the correspondence student limitation, the incarcerated student limitation, and the limitation on students without a high school diploma or equivalent.)  
34 CFR 600.7(h)

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### Conditions of institutional ineligibility

34 CFR 600.7

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### Prohibition on employment of individuals who have misused government funds

A school may not have as principals or employ or contract with other organizations that employ individuals who have engaged in the misuse of government funds.  
See *Chapter 3* for more details.

An additional location must obtain approval from the Department to become a branch campus. A branch campus then must operate as a branch campus for two years (satisfying the two-year rule) before it may be considered for status as a freestanding institution. Time as an additional location of an eligible proprietary institution or postsecondary vocational institution does not count toward the two-year rule.

## FACTORS LEADING TO LOSS OF ELIGIBILITY

### Limitations

An otherwise eligible institution becomes an ineligible institution if the school violates, among other requirements—

- the 50% limit on students without a high school diploma or equivalent (for schools that don't offer a 4-year bachelor's degree program or a 2-year associate degree program),
- the incarcerated student limitation (25%) or
- the correspondence course limitation (50%) or the correspondence student limitation (50%).

The school must demonstrate compliance with these limitations, and its calculations must be attested to by the independent auditor. We will discuss the calculations in more detail in *Chapter 4*, which describes FSA audit requirements. As discussed in *Chapter 4*, the school must notify the Department of the failure to meet any of these requirements.

### Bankruptcy or crimes involving FSA programs

A school is not eligible if it files for relief in bankruptcy or has entered against it an order for bankruptcy. The school is also ineligible if either of these circumstances apply to an affiliate of the school that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the school.

A school also loses its eligibility if the school, its owner, or its executive officer has

- pled guilty to, has pled *nolo contendere* to, or is found guilty of, a crime involving the acquisition, use, or expenditure of FSA program funds; or
- been judicially determined to have committed fraud involving FSA program funds.

If a school becomes ineligible for any of these reasons, the school must notify the Department of the change within 10 days. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA funds and must follow the requirements for a school that has lost its FSA participation (see *Chapter 9*). The loss of eligibility is effective as of the date of the bankruptcy, or the date the school or individual pleads to or is found responsible for the crime, as applicable. A loss of eligibility for these two reasons is permanent. The institution's eligibility cannot be reinstated.



## CRITERIA TO PARTICIPATE IN TEACH GRANT PROGRAM

Eligibility for the Teacher Education Assistance for College and Higher Education (TEACH) Grant program is not automatically extended to an FSA-eligible postsecondary school. A school qualifies as a “TEACH Grant-eligible institution” if it offers a high-quality teacher preparation program at either the baccalaureate or masters level and provides supervision and support services to teachers (or assists in the provision of such services). The teacher preparation program must be—

- accredited by a specialized accrediting agency recognized by the Department for the accreditation of professional teacher education programs, or
- approved by a state and must provide extensive pre-service clinical experience.

If a school does not have a teacher preparation program, it can qualify for TEACH grants if it—

- provides one or more 2-year programs of study that are acceptable for full credit to either a baccalaureate teacher preparation degree program or a baccalaureate degree program in a high-need field at another TEACH-eligible school with which it has an agreement;
- offers a baccalaureate degree that, in combination with other training or experience, will prepare a student to teach in a high-need field and has an agreement with another institution that offers a teacher preparation program or a post-baccalaureate program that prepares students to teach; or
- Offers a post-baccalaureate program that will prepare a student to teach.

## APPLYING AS AN ELIGIBLE NONPARTICIPATING SCHOOL

Some schools choose to establish their eligibility for FSA programs but elect not to participate in them because designation as an eligible institution qualifies a school or its students to apply to participate in non-FSA programs, such as the HOPE and Lifetime Learning Tax Credit. In addition, only students attending eligible institutions qualify for in-school deferments of payments on their federal education loans.

A nonparticipating eligible institution wishing to be designated an eligible nonparticipating institution may submit an E-App to the Department at any time. The application must be materially complete.

Following submission of an application, the Department will contact the school if it has additional questions about the application. Generally, this will be within 90 days of the Department receiving an application. After completing its review, if a school’s application has been approved, the Department will send an electronic notice to the president and financial aid officer notifying them that the school is eligible and that its approval letter and ECAR must be printed and maintained. If the school’s application has not been approved, the Department will notify the school and explain why.

## TEACH grant eligibility

Recognized agencies for the accreditation of professional teacher education programs include the Teacher Education Accreditation Council (TEAC) and National Council for Accreditation of Teacher Education (NCATE). Note: On October 22, 2010, TEAC and NCATE agreed to merge as the Council for the Accreditation of Educator Preparation (CAEP).  
GEN-08-07  
34 CFR 686.2  
34 CFR 686.4

## TEACH Grant Program

The College Cost Reduction and Access Act of 2007 (CCRAA), Public Law 110-84, established the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program. The TEACH Grant Program was effective as of July 1, 2008.  
GEN 08-01

### **“Enrolled” for purposes of withdrawal rates**

A student enrolls when he or she completes the registration requirements (except payment of tuition and fees) at the school.

Correspondence students are enrolled if they have been admitted to the program and have submitted one lesson (that was completed without the assistance of a school representative).

## **WITHDRAWAL RATES**

New schools (schools that seek to participate in an FSA program for the first time) must have an undergraduate withdrawal rate for regular students of no more than 33% during the school’s latest completed award year.

When calculating the withdrawal rate, the school must include all regular, enrolled students. The definition of enrolled does not require either payment of tuition or class attendance; therefore, the withdrawal rate calculation must include enrolled students who have not yet paid tuition or who did not actually begin attending classes.

A student is considered to have withdrawn if he or she officially withdraws, unofficially drops out, is expelled from the school, or receives a refund of 100% of his or her tuition and fees. A student who withdraws from one or more courses or programs but does not withdraw entirely from the school, does not meet the definition of withdrawn. Instead, this action is considered a change in enrollment status (e.g., the student reduced his credit hours from 12 to 6).

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### **Program Participation Agreement**

Sec. 487 of the HEA

34 CFR 668.14

20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141

## **THE PROGRAM PARTICIPATION AGREEMENT**

To participate in the FSA programs, a school must have a current Program Participation Agreement (PPA), signed by the school’s President or Chief Executive Officer and an authorized representative of the Secretary of Education.

### *Purpose and scope of the PPA*

Under the PPA, the school agrees to comply with the laws, regulations, and policies governing the FSA programs. After being certified for FSA program participation, the school must administer FSA program funds in a prudent and responsible manner. A PPA contains critical information about a school’s participation in the FSA programs. In addition to the effective date of a school’s approval, the date by which the school must reapply for participation, and the date on which the approval expires, the PPA lists the FSA programs in which the school is eligible to participate.

### *Expiration or termination of the Agreement*

Either the school or the Department may terminate the Program Participation Agreement. The Agreement automatically terminates if the school loses eligibility.

A school's Program Participation Agreement expires on the date that—

- the school changes ownership that results in a change in control (see *Chapter 5*),
- the school closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the school or its students (see closure procedures in *Chapter 9*),
- the school ceases to meet the eligibility requirements (see *Chapter 4* and “Factors Leading to Loss of Eligibility” in this chapter),
- the school's period of participation expires, or
- the school's provisional certification is revoked (see *Chapters 4, 5, and 9*).

In the case of a location of the school, the school's program participation agreement no longer covers a location as of the date on which that location ceases to be a part of the participating institution.

### Programs covered by the PPA

An eligible school must enter into a PPA with the Department to participate in the following programs:

- Federal Pell Grant
- Iraq and Afghanistan Service Grant\*
- TEACH Grant
- Federal Supplemental Educational Opportunity Grant (FSEOG)
- Federal Work-Study (FWS)
- Federal Perkins Loan (Perkins)
- Federal Direct Loan Program (DL)

\* A school that is certified for Pell Grant purposes is considered to be certified for the Iraq and Afghanistan Service Grant program.

## Selected provisions of the Program Participation Agreement

Most of the provisions of the Program Participation Agreement (PPA) are discussed in detail in *Volume 2* and other volumes of the *Federal Student Aid Handbook*. In this section, we highlight some of the general school requirements in the PPA that may not be as familiar to financial aid professionals.

Note that the PPA may list additional requirements that are school-specific; schools must carefully review all of the requirements listed on their PPA.

### ***General Terms & Conditions***

- The school certifies that it will comply with
  - a. Title VI of the Civil Rights Act of 1964, as amended, barring discrimination on the basis of race, color, or national origin;
  - b. Title IX of the Education Amendments of 1972, barring discrimination on the basis of sex;
  - c. the Family Rights and Privacy Act of 1974 (see *Chapter 9*)
  - d. Section 504 of the Rehabilitation Act of 1973, barring discrimination on the basis of physical handicap (34 CFR Part 104); and
  - e. The Age Discrimination Act of 1975 (34 CFR Part 110);
- The school acknowledges that the Department, states, and accrediting agencies may share information about the school without limitation.
- The school acknowledges that the school must, prior to any other legal action, submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration.

### ***General Provisions***

- The school will use funds received under any FSA program as well as any interest and other earnings thereon solely for the purposes specified for that program.
- If the school is permitted to request FSA program funds under an advance payment method, the school will time its requests for funds to meet only the school's immediate FSA program needs (see *Volume 4, Chapter 2*).
- The school will not charge for processing or handling any application, form, or data used to determine a student's FSA eligibility (see *Chapter 3*).
- The school will establish administrative/fiscal procedures and reports that are necessary for the proper and efficient management of FSA funds, and it will provide timely information on its administrative capability and financial responsibility to the Department and to the appropriate state, guaranty, and accrediting agencies (see *Chapter 8*).
- The school must acknowledge the authority of the Department and other entities to share information regarding fraud, abuse, or the school's eligibility for participation in the FSA programs (see *Chapter 9*).
- The school must, in a timely manner, complete reports, surveys, and any other data collection effort of the Department including surveys under the Integrated Postsecondary Education Data System (see *Chapter 8*).
- The school cannot penalize in any way a student who is unable to pay school costs due to compliance with the FSA program requirements or due to a delay in an FSA loan disbursement caused by the school.

## Program Participation Agreement— selected provisions, continued

- The school must comply with the program integrity requirements established by the Department, state authorizing bodies, and accrediting agencies (see *Chapter 9*).
- The school is liable for all improperly administered funds received or returned under the FSA programs including any funds administered by a third-party servicer (see *Chapter 3*).
- If the stated objectives of an educational program offered by the school are preparing students for gainful employment in a recognized occupation the school will
  - a. demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation, and
  - b. establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

### **Certifications**

Three certifications are included in the PPA:

- Lobbying; Debarment, Suspension, and other responsibility matters; and Drug-Free Workplace Requirements (see *Chapter 8*).
- Drug Prevention Certification (see *Chapter 8*).
- Certification regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion—lower tier covered transactions.

### **Direct Loans**

- The school will not charge any fees of any kind to student or parent borrowers for loan application, origination activities, or the provision and processing of any information needed to receive a Direct Loan.
- The note or evidence of obligation of the loan shall be the property of the Secretary.
- The school accepts responsibility and financial liability stemming from its failure to perform its functions under this Program Participation Agreement.

### **Additional requirements**

In addition to the requirements listed on the PPA, a school must meet any requirements for participation in the General Provisions (34 CFR Part 668), as well as those specific to an individual FSA program.

- \* FEDERAL PELL GRANT PROGRAM, 20 USC 1070a et seq; 34 CFR Part 690.
- \* FEDERAL DIRECT STUDENT LOAN PROGRAM, 20 USC 1087a et seq; 34 CFR Part 685.
- \* FEDERAL PERKINS LOAN PROGRAM, 20 USC 1087aa et seq; 34 CFR Part 674.
- \* FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM, 20 USC 1070b et seq; 34 CFR Part 676.
- \* FEDERAL WORK-STUDY PROGRAM, 42 USC 2751 et seq; 34 CFR Part 675.

These requirements are discussed in the *Application and Verification Guide* and volumes 1–6 of this *Federal Student Aid Handbook*.





# Program Eligibility, Written Arrangements, & Distance Education

*Many of the program eligibility requirements are derived from the institutional definitions that we discussed in Chapter 1. However, bear in mind that institutional eligibility does not mean that all programs at the school are eligible. A financial aid office should have a process to confirm the eligibility of an educational program before paying any FSA funds to students enrolled in that program, and should promptly report changes to the Department following the procedures in Chapter 5.*

## DETERMINING PROGRAM ELIGIBILITY

Because a school's eligibility does not necessarily extend to all its programs, the school must ensure that a program is eligible before awarding FSA funds to students in that program. The school is responsible for determining that a program is eligible.

In addition to determining that the program meets the eligible program criteria given in this chapter, the school should make certain that the program is included under the notice of accreditation from a nationally recognized accrediting agency (unless the agency does not require that particular programs be accredited).

The school should also make certain that it is authorized by the appropriate state to offer the program (if the state licenses individual programs at postsecondary institutions). In some instances a school or program may need a general authorization as well as licensure for a specific program approval. (Please see the chart on *Eligible Institutions* and the discussion under *Legal authorization by a state* in Chapter 1.)

A school's eligibility extends to all eligible programs and locations that were identified on the school's E-App, unless the School Participation Team (SPT) determines that certain programs or locations did not meet the eligibility requirements or it has not approved the expansion for purposes of FSA eligibility. In general, the school's eligible nondegree programs and locations are specifically named on the *Eligibility and Certification Approval Report* (ECAR). Additional locations and programs may be added later. Once the SPT has approved the program/location, it will notify the school and you can print out the updated ECAR.

If a program offered through telecommunications or continuing education meets the definition of an eligible program, students enrolled in that program must be considered for FSA program assistance on the same basis as students enrolled in eligible programs offered through traditional modes. With some limitations, if a program offered through correspondence

## CHAPTER 2 HIGHLIGHTS

- Determining program eligibility
- Basic types of eligible programs
  - at an institution of higher education
  - at proprietary or postsecondary vocational institutions
- Programs leading to gainful employment
- Criteria for other program types
  - Programs for: students with intellectual disabilities; TEACH Grants; ESL; direct assessment; study abroad; flight school
- Written arrangements between schools
- Distance education & correspondence study
- Clock-hour/credit-hour conversions

## Related topics

- Eligibility requirements for specific educational programs—*Volume 1, Chapter 1*
- Types of educational programs defined for eligible institutions—*Volume 2, Chapter 1*
- Updating the E-App for changes to programs and locations—*Volume 2, Chapter 5*

## Program eligibility

34 CFR 668.8  
34 CFR 691.2(b)

## Program eligibility and school & student eligibility

To qualify as an eligible institution, a school must offer at least one eligible program. Not all programs at an eligible institution must be eligible, but at least one of the programs at the school must meet the eligible program requirements.

Except for students enrolled in certain preparatory or teacher certification courses, a student must be enrolled in an eligible program to receive FSA funds (for more information, see *Volume 1, Chapter 1*).

## Recognized occupation

All non-degree programs must prepare students in that program for gainful employment in a specific recognized occupation. (This requirement also applies to degree programs at proprietary schools.)

A “recognized occupation” is one that is:

- identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget or an Occupational Information Network O\*NET–SOC code established by the Department of Labor and available at O\*NET OnLine, at <http://www.onetonline.org/>, or its successor site, or
- considered by ED, in consultation with the Department of Labor, to be a recognized occupation.

Please note that if the title of your program does not clearly indicate the specific occupation that the program prepares the student for, you must provide that information on the school's E-App.

## Credit & clock hours

Later in this chapter is a discussion of how program length is measured in credit and clock hours.

## Other eligible programs

Recent legislation adds several additional categories of eligible programs:

- a direct assessment program approved by the Department (discussed later in this chapter),
- a comprehensive transition and postsecondary program approved by the Department (discussed later in this chapter), and
- a program leading to a baccalaureate degree in liberal arts (as defined in 34 CFR 600.5(e)), at a proprietary school that is accredited by a recognized regional accrediting agency or association. (The school must have been continuously accredited by a regional accrediting agency since at least October 1, 2007, and have provided the program continuously since January 1, 2009.)

Higher Education Act of 2008  
34 CFR 668.8

meets the definition of an eligible program, students enrolled in that program will be considered eligible (see *Distance education and correspondence study* in this chapter).

## BASIC TYPES OF ELIGIBLE PROGRAMS

### *Eligible programs at an institution of higher education*

At a school that qualifies as a public or private nonprofit institution of higher education, the following types of programs are eligible for FSA purposes:

- a program that leads to an associate, bachelor's, professional, or graduate degree.
- a program of at least 2 academic years in duration that is acceptable for full credit toward a bachelor's degree,
- a program of at least 1 academic year in duration that leads to a certificate or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation, or
- a certificate or diploma training program that is less than 1 year (if the school also meets the definition of a postsecondary vocational institution).

Note that a nondegree program at a public or private nonprofit institution is subject to the rules for a “gainful employment program” (unless the program is at least a 2-year transfer program). Gainful employment programs are explained below.

### *Eligible programs at a proprietary or postsecondary vocational institution*

There are three types of eligible programs at a proprietary institution or a postsecondary vocational institution. All of these programs must have a specified number of weeks of instruction, and must provide training that prepares a student for gainful employment in a recognized occupation.

- The first type of eligible program must provide at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours of undergraduate instruction offered during a minimum of 15 weeks of instruction. The program may admit as regular students persons who have not completed the equivalent of an associate degree.
- The second type of eligible program must provide at least 300 clock hours, 8 semester hours, or 12 quarter hours of instruction offered during a minimum of 10 weeks of instruction. The program must be a graduate or professional program or must admit as regular students only persons who have completed the equivalent of an associate degree.
- The third type of program is known as the short-term program. A short-term program qualifies for the Direct Loan program only. This type of program must provide at least 300 but less than 600 clock hours of instruction offered during a minimum of 10 weeks of instruction. The program must admit as regular students some

persons who have not completed the equivalent of an associate degree.

There are several additional requirements that a short-term program must meet. The program must—

- have verified completion and placement rates of at least 70% (see chart),
- not be more than 50% longer than the minimum training period required by the state or federal agency, if any, for the occupation for which the program of instruction is intended, and
- have been in existence for at least one year.

## Completion & placement rates for short-term programs

For the purpose of demonstrating compliance with the standards for short-term (300–600 clock-hour) programs, a school must calculate the completion and placement rates for the award year. The independent auditor who prepares the school's compliance audit report must attest to the accuracy of the school's calculation of completion and placement rates. See 34 CFR 668.8(e), (f), and (g)

Number of regular students who earned credentials for successfully completing the program within 150% of the length of the program

Number of regular students enrolled in the program for the award year

– number of regular students who withdrew with a 100% refund of tuition and fees

– number of regular students enrolled at the end of the award year

= Completion Rate

Number of students who obtained employment\* within 180 days of receiving credential and who are employed (or have been employed) for at least 13 weeks following receipt of credential

Number of regular students who received credential for successfully completing the program during the award year

= Placement Rate

\*in the recognized occupation for which they were trained or in a related comparable occupation

The school must document the employment of any student it includes as employed in the placement rate calculation. Examples of such documentation include, but are not limited to, a written statement from the employer, signed copies of state or federal income tax forms, or written evidence of payment of Social Security taxes.

The school must reasonably determine whether a related occupation is comparable. For instance, for a student who was trained as an auto mechanic, it is reasonable to determine that a job as a boat mechanic is comparable. However, for a person trained in retail sales management, a counter-service job at a fast-food restaurant is not comparable.

## Requirements for gainful employment programs

- Requirement to notify the Department at least 90 days in advance of adding a gainful employment program; see *Chapter 5*.
- Disclosure (student information); see *Chapter 6*.
- Reporting information to ED on gainful employment programs at your school; see *Chapter 8*.

## Summary of gainful employment programs

- Virtually all educational programs offered by for-profit institutions are gainful employment programs.
- All educational programs that lead to a degree awarded by a public or private non-profit institution are not gainful employment programs.
- Virtually all non-degree educational programs awarded by a public or private non-profit institution are gainful employment programs.

Gainful Employment Electronic Announcement #11, June 24, 2011

## Gainful employment guidance

Gainful Employment Electronic Announcement #11 provides a series of questions that can be used to help determine if an educational program is a gainful employment program. See also Announcement #19 and Question G-Q9 on the FAQ page. Continuing updates on this topic will be posted on the Gainful Employment Information Page on IFAP.

## Teacher certification update

Note that the description of teacher certification programs in GEN-11-10 was amended on May 20, 2011. This announcement also clarified that—

- Teacher certification that consists of a collection of course work that is required for a student to receive a state professional teaching credential or certification but does NOT lead to the awarding of a degree or certificate by the institution is not a GE Program.
- However, a teacher certification program that does lead to the awarding of a certificate or other non-degree (for a for-profit institution, also a degree) credential is a GE Program, and the institution must comply with all of the GE Program regulatory requirements.

Gainful Employment Electronic Announcement #3, May 20, 2011

Note that all degree and nondegree programs at a proprietary institution are subject to the rules for a “gainful employment program,” except for the liberal arts programs described in the sidebar. Gainful employment programs are explained below.

**NEW**

## PROGRAMS LEADING TO GAINFUL EMPLOYMENT **NEW**

In order to be eligible for funding under the FSA programs, an educational program must lead to a degree (associate, bachelor's, graduate, or professional) or prepare students for “gainful employment in a recognized occupation.” In addition, virtually all programs—degree and nondegree—offered by proprietary institutions must prepare students for “gainful employment in a recognized occupation.”

Collectively, we refer to these programs, all nondegree educational programs offered by public and nonprofit institutions and virtually all academic programs offered by proprietary institutions, as “gainful employment programs” (or “GE Programs”).

Many institutions that participate in the FSA programs, even those that are public or nonprofit and that predominantly offer degrees, will likely have one or more gainful employment programs. In fact, fewer than 1,000 out of the approximately 6,000 institutions that are currently participating in the FSA programs have no gainful employment programs. Therefore, all institutions must be aware of the new regulatory requirements and the information in this letter to ensure that they will be in compliance with the new gainful employment regulations.

The following provides specific information, presented separately for different types of institutions, on the educational programs that are considered to be gainful employment programs and, therefore, subject to the new rules relating to reporting, disclosures, and the addition of new gainful employment programs.

Certain disclosure and reporting requirement apply to gainful employment programs (see sidebar).

### *Domestic proprietary institutions & domestic postsecondary vocational institutions*

Gainful Employment Programs—The following educational programs offered by these institutions are gainful employment programs subject to the new regulations:

- Undergraduate and graduate degree programs.
- Certificate programs. Certificate programs include undergraduate certificate programs, post-baccalaureate certificate programs, graduate certificate programs, and postgraduate certificate programs.
- Teacher certification programs that result in a certificate awarded by the institution (see sidebar).

- Approved “Comprehensive Transition Programs” for students with intellectual disabilities.

**Not Gainful Employment Programs**—The following educational programs offered by these institutions are not subject to the new GE Program regulations:

- Programs that lead to a baccalaureate degree in liberal arts if the institution has been accredited by a regional accrediting agency since October 2007 and the institution has offered the program since January 2009.
- Preparatory courses of study that provide course work necessary for enrollment in an eligible program.

### *Domestic public and domestic private nonprofit institutions of higher education*

**Gainful Employment Programs**—The following educational programs offered by these institutions are gainful employment programs subject to the new regulations:

- Nondegree programs, including all certificate programs. Certificate programs include undergraduate certificate programs, postbaccalaureate certificate programs, graduate certificate programs, and postgraduate certificate programs. Note that awarding students one or more certificates as part of a degree program does not create GE programs based upon the awarding of the certificate(s).
- Teacher certification programs that result in a certificate awarded by the institution (see sidebar).
- Approved “Comprehensive Transition Programs” for students with intellectual disabilities.

**Not Gainful Employment Programs**—The following educational programs offered by these institutions are not subject to the new gainful employment program regulations:

- Programs that lead to a degree, including associate’s degrees, bachelor’s degrees, graduate degrees, and professional degrees.
- Programs that are at least two years in length that are fully transferable to a bachelor’s degree program.
- Preparatory courses of study that provide course work necessary for enrollment in an eligible program.

### *Foreign proprietary institutions*

**Gainful Employment Programs**—The only programs at foreign proprietary institutions that are eligible for the FSA loan programs are degree programs in medicine, nursing, and veterinary science. These programs offered at these institutions are gainful employment programs subject to the new requirements.

### **Degree program where student receives certificate in addition to degree**

If students are enrolled in only the degree program and are not also enrolled in a separate certificate program, it is the degree program that should be evaluated using the guidance in Gainful Employment Electronic Announcement #11.

If the institution also offers a separate certificate program, students enrolled in the degree program only should not be included in either the disclosures or reporting for the separate certificate program.

If students are enrolled in a certificate program, even if the enrollment is concurrent with enrollment in the degree program, those students must be included in the certificate gainful employment program’s reporting and disclosures, and also in the degree program’s reporting and disclosures if the degree program is considered a gainful employment program under Gainful Employment Electronic Announcement #11.

If a significant number of the students enrolled in the degree program are awarded only the certificate and not the degree, the students enrolled in the degree program must be included in the disclosures and reporting for a certificate GE Program. If the institution does not offer a separate certificate program, it must, for gainful employment purposes, treat the degree program as a gainful employment certificate program for which the institution must comply with the gainful employment regulatory requirements. Gainful Employment Electronic Announcement #12



## Applying for eligibility for a transition program

When applying to the Department for eligibility for a comprehensive transition program, a school must follow the procedures in 34 CFR 600.20 and provide the information described in 34 CFR 668.232.

Not Gainful Employment Programs—None.

### *Foreign public and nonprofit institutions*

Gainful Employment Programs—Same as domestic public and domestic nonprofit institutions, as provided previously.

Not Gainful Employment Programs—Same as domestic public and domestic nonprofit institutions, as provided previously.

## Definition of intellectual disability

A student with an intellectual disability means a student

- 1) with mental retardation or a cognitive impairment characterized by significant limitations in—
  - (i) Intellectual and cognitive functioning; and
  - (ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and
- (2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

## ADDITIONAL ELIGIBILITY REQUIREMENTS

There are additional FSA program eligibility requirements for specific educational programs. For example, only undergraduate educational programs are eligible under the Pell Grant and FSEOG programs. Correspondence programs are not eligible unless they meet the general requirements for an eligible program and are required for the student's regular program of study leading to a degree.

### *Transition programs for students with intellectual disabilities*

A student with an intellectual disability who enrolls in a comprehensive transition and postsecondary program at a school that participates in the FSA programs is eligible for nonloan assistance (Pell Grants, FSEOG, and Federal Work Study). As discussed in *Volume 1*, the student is exempt from several student eligibility requirements.

A comprehensive transition and postsecondary program is a degree, certificate, nondegree, or noncertificate program that is designed to support students with intellectual disabilities who want to continue their instruction (academic, career and technical, and independent living) at a postsecondary school in order to prepare for gainful employment.

## ACG/SMART grants

Note that references to the Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent (National SMART) Grant programs have been removed—these programs are not authorized beyond the 2010–2011 award year.



The program must

- be delivered to students physically attending the institution,
- include an advising and curriculum structure, and
- provide students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

Such programs must require students with intellectual disabilities to have at least 1/2 of their participation in the program, as determined by the school, focus on academic components through one or more of the following activities:

- taking credit-bearing courses with students without disabilities.
- auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit,
- taking non-credit-bearing, nondegree courses with students without disabilities, and,
- participating in internships or work-based training in settings with individuals without disabilities.



A school that offers a comprehensive transition and postsecondary program must apply to the Department to have the program determined to be an eligible program.

### *Educational programs eligible for TEACH Grants*

To qualify as an eligible program for TEACH Grants, an educational program must be a program of study that

- is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree (including 2-year programs of study that are acceptable for full credit toward a baccalaureate degree), or
- is a post-baccalaureate program of study for students who have completed a baccalaureate degree but need to take additional state-required courses for teacher certification or licensure.

A post-baccalaureate program consists of courses required by a state in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that state. It must be a program that is treated as an undergraduate program for FSA purposes, and may not lead to a graduate degree. In addition, note that a program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education cannot be considered a postbaccalaureate program. For information on TEACH program requirements as a student eligibility issue, see *Volume 1, Chapter 6*.

### *ESL Programs*

Students enrolled in a program that consists solely of English as a Second Language (ESL) instruction are eligible for FSA funds only from the Pell Grant program. An ESL program must meet the general requirements for an eligible program (for example, it must lead to a degree or other credential). Moreover, an ESL program may admit only students who need instruction in English to be able to use the knowledge, training, or skills they already have. The school must document its determination that the ESL instruction is necessary for each student enrolled.

A school that wishes to award FSA assistance to students enrolled in an ESL program must request an eligibility determination for the program from the Department.

### *Direct assessment programs*

Instead of using credit hours or clock hours as a measure of student learning, some instructional programs use direct assessment of student learning, or recognize the direct assessment of student learning by others. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios. The assessment must be consistent with the accreditation of the institution or program using the results of the assessment.

A school that wishes to award FSA funds in a program using direct assessment must apply to the Department for approval of the program, using the E-App. The application must specify the equivalent number of

### **TEACH Grant program**

The **Teacher Education Assistance for College and Higher Education (TEACH) Grant** program was created by the College Cost Reduction and Access Act of 2007 (CCRAA).  
34 CFR Part 686

### **Program eligibility vs. student eligibility in TEACH**

The preamble to the June 23, 2008 TEACH regulations draws a distinction between *program eligibility* (where the school may identify, within the parameters of the regulations, the scope of school programs that are TEACH Grant-eligible) and *student eligibility* (where the school must adhere to the eligibility criteria in the regulations);

The preamble further states: Ultimately, it is up to the institution to decide, based on regulatory requirements, what programs are TEACH Grant-eligible and when a student is considered to be accepted into a TEACH Grant-eligible program.

For instance, a school can determine that only some of the programs for which it currently awards other FSA funds are also eligible for TEACH, even if some programs it does not wish to make TEACH Grant-eligible meet the regulatory definition.

### **Additional ESL considerations**

- A school must define the effect of any noncredit remedial courses (including ESL courses) on a student's academic progress. See Chapter 10 in this Volume.
- Awarding FSA loans to a student over a series of semesters for ESL or remedial coursework could potentially exhaust the student's eligibility under the aggregate loan limits before the student completes his/her educational program. See *Volume 1, Chapter 1*.

### **Direct Assessment programs**

FSA eligibility for direct assessment programs was established by the Higher Education Reconciliation Act of 2005  
For application procedures and other information, see 34 CFR 668.10.

## Direct assessment as a measure of learning

Direct assessment of student learning means a measure by the institution of what a student knows and can do in terms of the body of knowledge making up the educational program. These measures provide evidence that a student has command of a specific subject, content area, or skill or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated with the subject matter of the program.

## Academic year & weeks

An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time. A week of instructional time in a direct assessment program is any 7-day period in which at least 1 day of educational activity occurs.

Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the school, or, in combination with any of the assessments.

## Independent study

For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

credit or clock hours for a direct assessment program (or portion of the program, as applicable). (The clock or credit hours will be used as the basis for the FSA award calculations described in *Volume 3, Chapter 1*.) As a part of its application, the school must explain how it determined the equivalent number of credit or clock hours for the program.

A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the school providing the direct assessment program without regard to the limitations on contracting for part of an educational program (see *Written arrangements between schools*).

FSA funds may be awarded only for learning that results from instruction provided, or overseen, by the school. FSA funds cannot be awarded for any portion of the program based on study or life experience prior to enrollment in the program, or based on tests of learning that are not associated with educational activities overseen by the school.

Several types of programs and coursework that might otherwise be eligible for FSA purposes are not eligible if they involve direct assessment:

- Programs at foreign schools.
- Preparatory coursework required for entry into an eligible program (see *Volume 1, Chapter 6*).
- Courses necessary for an elementary or secondary school teaching credential or certificate (see *Volume 1, Chapter 6*).
- Remedial coursework measured through direct assessment.

However, note that remedial instruction offered in credit or clock hours in conjunction with a direct assessment program is eligible for FSA funds.

If the school plans to change any aspect of the program described in the application, it must obtain prior approval from the Department by reapplying.

## Study abroad programs

A participating institution may establish programs of study abroad for which its students are eligible to receive assistance through the FSA programs. A study abroad program is an eligible program if—

- students studying abroad concurrently remain enrolled at their eligible home school; and
- the eligible home school awards academic credit for the program of study abroad.

While the study abroad program must be considered part of the student's eligible program, it does not have to be a required part of the student's eligible degree program in order to be an eligible study abroad program. However, a school must have a written agreement with the institution offering the study abroad program, or with an entity representing that institution (see next section). Moreover, in the information it provides to students about a study abroad program, a school must inform students about the availability of FSA assistance.

*Flight school programs*

A flight school program must maintain current valid certification by the Federal Aviation Administration to be eligible.

**WRITTEN ARRANGEMENTS BETWEEN SCHOOLS**

Under a consortium or contractual agreement (including those for study-abroad programs), the home school must give credit for courses taken at the other schools on the same basis as if it provided the training itself. The underlying assumption of such an agreement is that the home school has found the other school's or organization's academic standards to be equivalent to its own, and a completely acceptable substitute for its own instruction.

A home school may decline to give credit for courses in which a student earns a grade that is not acceptable at the home school even though the host school has a policy of accepting that grade for its resident students. In addition, even though grades received through consortium or contractual agreements do not have to be included in the calculation of the student's grade point average (GPA), they must be included when calculating the quantitative component (the percentage of credits earned vs. attempted) of a student's satisfactory academic progress.

If not written for an individual student or group of students, agreements between schools can go on indefinitely. These agreements do not have to be renewed unless the terms of the agreement change.

A school must provide enrolled and prospective students with a description of the written arrangements it has entered into, including—

- The portion of the educational program that the school that grants the degree or certificate is not providing;
- The name and location of the other schools or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;
- The method of delivery of the portion of the educational program that the school that grants the degree or certificate is not providing; and
- Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

*Consortium Agreement*

A consortium agreement can apply to all FSA programs. Under a consortium agreement, students may take courses at a school other than the home school and have those courses count toward the degree or certificate at the home school. A student can only receive FSA assistance for courses that are applicable to the student's certificate or degree program.

**Flight school program**

34 CFR 668.8(h)(i)

**Arrangements**

34 CFR 668.5

**Definitions**

**Consortium agreement**—a written agreement between two or more eligible schools.

**Contractual agreement**—a written agreement between an eligible school and an ineligible school.

**Home school**—the school where the student is enrolled in a degree or certificate program.

**Host school**—the school where the student is taking part of his or her program requirements through either a consortium or contractual agreement.

**Two plus two program**—a partnership between a two-year and four-year school that facilitates a student's completing the last two years of the student's four-year degree.

**Requirement to inform students of arrangement**

34 CFR 668.43(a)(12)

**Contents of a consortium agreement**

The Department does not dictate the format of the agreement (which can be executed by several different offices) or where the agreement is kept. However, the following information should be included in all agreements:

- the school that will grant the degree or certificate;
- the student's tuition, fees, and room and board costs at each school;
- the student's enrollment status at each school;
- the school that will be responsible for disbursing aid and monitoring student eligibility; and
- the procedures for calculating awards, disbursing aid, monitoring satisfactory progress and other student eligibility requirements, keeping records, and returning funds in the event the student withdraws.



## Written arrangements between schools under same ownership or control

If the written arrangement is between 2 or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Department considers the educational program to be an eligible program if—

- The educational program offered by the school that grants the degree or certificate otherwise satisfies the requirements of an eligible program (described in this chapter); and
- The school that grants the degree or certificate provides more than 50% of the educational program.



## Study abroad references

Arrangements with a study abroad organization

34 CFR 668.5

Eligibility of students in study abroad program

34 CFR 668.39

## Eligible study-abroad students entitled to FSA

Some eligible students have had problems receiving FSA funds for study abroad or domestic-exchange programs because neither the student's home school nor the school the student was temporarily attending documented that the student was enrolled in an eligible program of study. These circumstances have caused otherwise eligible students to be denied financial assistance at both schools.

The law states that a student participating in a study abroad program approved by the home school is eligible for FSA funds, regardless of whether the program is required for the student's regular, eligible program of study, as long as

- the student is an eligible regular student enrolled in an eligible program at the home school; and
- the eligible school approves the program of study abroad for academic credit.

The Program Participation Agreement (PPA) requires participating schools to establish procedures that ensure that its students participating in study abroad programs receive the FSA funds to which they are entitled.

A consortium agreement can be a blanket agreement between two or more eligible schools, or it can be written for a specific student. Such an agreement is often used when a student takes related courses at neighboring schools or when a student is enrolled in an exchange program with another eligible school for a term or more. A school could have

- one agreement for each student;
- a separate agreement with each host school; or
- a blanket agreement with a group of schools.

In a consortium agreement there is no limit on the portion of the eligible program that may be provided by eligible schools other than the home school. Agreement contents can vary widely and will depend upon the interests of the schools involved and the accrediting or state agency standards. (See sidebar for required contents of an agreement.)

Usually, the home school is responsible for disbursing funds, but if the student is enrolled for a full term or academic year at the host school, it may be easier for the host school to monitor the student's eligibility and make payments.

When there is a written arrangement between eligible schools, any of the schools participating in the written arrangement may make FSA calculations and disbursements without that school being considered a third-party servicer. This is true even if the student is not currently taking courses at the school that is calculating and disbursing the aid.

The school that disburses an FSA award is responsible for maintaining information on the student's eligibility, how the award was calculated, what money has been disbursed, and any other documentation associated with the award (even if some of that documentation comes from other schools). Moreover, the school paying the student must return FSA funds if required (for example, in refund/return or overpayment situations). For details on how agreements affect Pell Grant calculations, see *Volume 3, Chapter 3*.

## Contractual Agreement

Provided the limitations in the following paragraphs are adhered to, an eligible institution may enter into a contractual agreement with an ineligible school or organization under which the ineligible school or organization provides part of the educational program of students enrolled at the eligible school.

An eligible school is prohibited from entering into a contract with an ineligible school or organization whose—

- eligibility or certification to participate in the FSA programs has been terminated or revoked by the Department, or
- application for certification or re-certification to participate in the FSA programs denied by the Department.



Similarly, an eligible school is prohibited from entering into a contract with an ineligible school or organization that has voluntarily withdrawn

from participation in the FSA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the school's state licensing agency, accrediting agency, guarantor, or by the Department.

Under a contractual agreement, the eligible school is always the home school. The home school performs all the aid processing and disbursement functions for its students attending the ineligible school or organization. The home school is responsible for maintaining all records necessary to document student eligibility and receipt of aid (see *Chapter 7*).

For schools in a contractual agreement, there is a limit on the portion of the program that can be offered by the ineligible school. If both the home and ineligible schools are owned or controlled by the same individual, partnership, or corporation, no more than 25% of the educational program can be provided by the ineligible school. If the two schools are separately owned or controlled, the ineligible school can provide up to 50% of the educational program. However, in the case of separately owned schools, if the contracted portion is more than 25% of the program, the home school's accrediting agency or state agency (in the case of a public postsecondary vocational institution) must determine and confirm in writing that the agreement meets its standards for contracting out education services.

### *Study Abroad or Domestic Exchange Programs*

A study abroad program must be part of a written contractual or consortium agreement between two or more schools. The study abroad program does not have to be a required part of the eligible program at the home school in order for the student to be eligible to receive FSA funds, but the credits earned through the study abroad or exchange program must be acceptable toward graduation in the student's program by the home school.

When there is a written arrangement between eligible schools, any of the schools participating in the written arrangement may make FSA program calculations and disbursements without that school being considered a third-party servicer. This is true even if the student is not taking courses at the schools that is calculating and disbursing the aid.

Students enrolled in study abroad programs with costs of attendance higher than those of the home school should have those costs reflected in the cost of attendance on which their aid is based. This may result in a student being eligible for additional FSA funds, including a higher Pell award, not to exceed the Pell award maximum.

### *Types of Study-Abroad Programs*

Study abroad program configurations include:

A home school sends students to a study abroad program at an eligible or ineligible foreign (host) school. The home school must have a consortium or contractual agreement with the foreign school.

A home school allows a student to complete a portion of the student's program at an eligible host school in the United States and that host school offers a study abroad program in conjunction with either an eligible or ineligible foreign school.



### Changes to distance education & telecommunications

Pursuant to the HERA 2005, telecommunications courses are no longer considered correspondence courses, thus the 50% limits on correspondence courses and students no longer apply.

The definition of “correspondence course” was revised and a new definition of “telecommunications course” was added to 34 CFR 600.2.

*Federal Register*, August 9, 2006.

Pursuant to HEOA 2008, the definition of “telecommunications” was removed from 34 CFR 600.2 and the statutory definition of “distance education” was added.

*Federal Register*, October 27, 2009.

- The home and host schools in the United States must have a consortium agreement.
- The host school in the United States must have a consortium or contractual agreement with the foreign school.

A home school has a written arrangement with a study abroad organization that represents one or more foreign schools instead of a separate agreement directly with each foreign school that its students are attending. For purposes of administering the FSA programs, the written agreement between the eligible institution and the study abroad organization must adequately describe the duties and responsibilities of each entity and meet the requirements of the regulations.

A variant of the study abroad program occurs when a home school sends faculty and students to a foreign site. This does not represent a consortium or contractual study abroad program. Rather, the foreign site is considered an additional location under 34 CFR 600.32.

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### State process for complaints

Note that under 34 CFR 668.43(b) you must provide state contact information to students or prospective students for filing complaints in each state in which you operate. (See *Chapter 6* for the school consumer information requirement.)

## DISTANCE EDUCATION & CORRESPONDENCE STUDY

Schools use distance education and correspondence courses to respond to students’ needs for alternatives to the schedules and locations at which courses traditionally have been offered. A school may not refuse to provide FSA funds to a student because he or she is enrolled in correspondence or distance education courses unless the courses are not part of an eligible program.

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### Accreditation for distance education

The Department reminded schools in September 2006 that distance education programs must be evaluated by an accrediting agency that is recognized by ED for the purpose of evaluating distance education. This letter included specific instructions on notifying ED if the school intended to seek new accreditation, and updating the E-App to reflect changes to the school’s accreditation. GEN-06-17

Some participating institutions contract with distance education providers that are not eligible to participate in the FSA programs. These participating institutions must ensure that they do not exceed the limitations on contractual arrangements (see previous section).

### *Distance Education*

A distance education program at a domestic school is considered an eligible FSA program if it has been accredited by an accrediting agency recognized by the Department for accreditation of distance education. It is not subject to the rules that apply to correspondence coursework, which are discussed in the next section.

Distance education means education that uses certain technologies to deliver instruction to students who are separated from the instructor, and to support regular and substantive interaction between the students and the instructor. The interaction may be synchronous (student and instructor are in communication at the same time) or asynchronous. The technologies may include

- the Internet,
- audio conferencing, or
- one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices.

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### Telecommunications & correspondence study at foreign schools

A program offered by a foreign school in whole or in part by telecommunications, by correspondence, or as a direct assessment program is not an eligible program. 34 CFR 600.51(d)



A course taught through video cassettes or discs is also considered a distance education course but only if one of the three technologies listed is used to support interaction between the students and the instructor.

### *Correspondence courses*

Unlike distance education courses, which are now treated in the same way as all other eligible programs, some restrictions apply to correspondence courses.

A correspondence course is a home-study course provided by a school under which the school provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the school. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student.

Correspondence courses are typically self-paced. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials and returns the examinations to the school for grading.

- If a course is part correspondence and part residential training, the course is considered to be a correspondence course.
- If a school adds telecommunications technology, such as electronic delivery of course materials or an online discussion board, to a correspondence course, the school must ascertain the predominant method of instruction (correspondence or telecommunications), keeping in mind that a telecommunications course must use technology to support regular and substantive interaction between students and the instructor. The school must apply the rules for the predominant method in administering its participation in the FSA programs.
- A course that is delivered in whole or in part through the use of video cassettes or video discs is a correspondence course unless the school also delivers comparable instruction to students attending resident classes at the school during the same award year.

If a school offers more than 50% of its courses by correspondence or if 50% or more of its students are enrolled in its correspondence courses, the school loses its eligibility to participate in the FSA programs (see *Chapter 1*).

Note that correspondence students enrolled in certificate programs are not eligible for FSA funds. For a full discussion of when a school may pay a student for correspondence study, see *Volume 1, Chapter 1*. Also see *Volume 3, Chapter 2* for limitations on the cost of attendance for correspondence students and *Volume 3, Chapter 1* for the timing of disbursements to correspondence students.

### **Correspondence courses & institutional eligibility**

34 CFR 600.2, "Correspondence course"  
34 CFR 600.7(a)(1)(i) and (ii)  
34 CFR 602.3, "Correspondence education"  
HEA Sec. 102(a)(3)(A) and (B)

### **Videocassettes and discs example**

A school offers an English 101 course via video cassette and computer conferencing. English 101 is also offered to students physically attending classes at the school during the same award year. In this case this course would be considered a telecommunications course.

The school also offers Art History 302 via video cassette. Art History 302 is **not** offered to students physically attending classes at the school during this award year. In this case this course would **not** be considered a telecommunications course for this award year. It is considered a correspondence course.

### **A combined correspondence and residential program example**

A school offers a truck driving program. The first part of the program is offered via correspondence. After completing the correspondence portion of the program the student has to attend a residential site where he or she actually learns how to drive trucks.

This program is considered a correspondence program.

## Credit & clock hour rules

Definition of clock hour

34 CFR 600.2

Programs considered to be clock hour

34 CFR 668.8(k)

Definition of credit hour

34 CFR 600.2

## Implementation dates for new rules

For students enrolled in programs subject to the conversion as of July 1, 2011, the school may—

- Use current regulations until the students complete the program; or
- Apply new regulations for all students enrolled in payment periods assigned to 2011-12 award year.

For students who enroll or reenroll on or after July 1, 2011, the school must use the new regulations.

## Measuring attendance in clock hours

A student's period of attendance is measured according to one of several commonly accepted academic standards. A clock hour is based on an actual hour of attendance (though each hour may include a 10-minute break). Credit hours are typically based on two hours of homework for each hour of class attendance.

A school is not permitted to count more than one clock hour per 60-minute period; in other words, a school may not schedule several hours of instruction without breaks, and then count clock hours in 50-minute increments.

For instance, a school could not consider 7 consecutive hours of instruction to be 8.4 hours by dividing 50 minutes into the sum of 420 minutes. In this example, seven 60-minute periods of instruction may not count for more than seven clock hours.

## CLOCK-HOUR/CREDIT-HOUR CONVERSIONS IN DETERMINING PROGRAM ELIGIBILITY

The credit hour definition and the credit/clock hour conversion rules serve two purposes—

1. to determine program eligibility, and
2. to determine the award amount for certain FSA programs..



In this section, we discuss the first of these topics—the use of the credit and clock hour rules in determining if a program meets the minimum program length requirements discussed earlier in the chapter. For a discussion of the use of credit and clock hours in determining enrollment level and FSA awards, see *Volume 3, Chapter 1*.

### When a school must use clock hours for FSA purposes

A school may consider any program to be a clock-hour program. A GE program (see “Programs leading to gainful employment” earlier) must be considered to be a clock-hour program for purposes of the FSA programs if—



- A program is required to measure student progress in clock hours when 1) receiving federal or state approval or licensure to offer the program; or 2 ) completing clock hours is a requirement for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue;
- The credit hours awarded for the program are not in compliance with the definition of a credit hour (see below); or
- The school does not provide the clock hours that are the basis for the credit hours awarded for the program or each course in the program and, except for allowable excused absences (34 CFR 668.4(e)), requires attendance in the clock hours that are the basis for the credit hours awarded.

However, these requirements do not apply to a program if there is a state or federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience component of the program that must include a minimum number of clock hours.

### Definition of a clock hour

A clock hour is defined as a period of time consisting of—

- A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or
- Sixty minutes of preparation in a correspondence course.

**Definition of a credit hour**

A credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

1. One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately 15 weeks for one semester or trimester hour of credit, or 10 to 12 weeks for one quarter hour of credit, or at least the equivalent amount of work over a different amount of time; or
2. At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

The regulations make an exception to this definition in the case of programs that are subject to one of the clock-hour/credit hour conversion formulas (below).

**Clock/Credit Hour conversions in determining program eligibility**

If your school offers an undergraduate educational program in credit hours that is considered a GE program, it must use one of the following conversion formulas, unless—

- The program is at least 2 academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Department; or
- Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Department, provided that 1) the school's degree requires at least two academic years of study; and 2) the school demonstrates that students enroll in, and graduate from, the degree program.

The conversion formula will determine whether the program includes the minimum number of credit hours to qualify as an eligible program for FSA purposes.

For purposes of determining the number of credit hours in that educational program with regard to the FSA programs—

- A semester hour must include at least 37.5 clock hours of instruction;
- A trimester hour must include at least 37.5 clock hours of instruction, and
- A quarter hour must include at least 25 clock hours of instruction.

**State/accrediting agency criteria for clock/credit hours**

The regulations for state and accreditation agencies explain how an agency reviews a school's assignment of credit hours.  
34 CFR 602.24 and 603.24

**Clock/credit hour conversions**

34 CFR 668.8(k) & (l)

**Exemption if ED determines that the program offers "equivalent degree"**

The regulations also stipulate that the school is exempted from using the clock-hour/credit-hour formulas if the Department determines that the program provides a degree equivalent to an associate degree, a bachelor's degree, or a professional degree. This does not permit a school to ask for a determination that a nondegree program is equivalent to a degree program.

**Rounding**

Because the results of these formulas determine the eligibility of a program, the resulting number of credit hours may not be rounded up. The results for each course may include the result with fractions or must be rounded down.

### Out-of-class student work

The school's conversions to establish a minimum number of clock hours of instruction per credit may be less, if the school's designated accrediting agency, or recognized state agency for the approval of public postsecondary vocational institutions for participation in the FSA programs has not identified any deficiencies with the school's policies and procedures, or their implementation, for determining the credit hours (as defined above), that the school awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as—

- The school's student work outside of class combined with the clock-hours of instruction meet or exceed the numeric requirements (37.5 or 25); and
- 1) A semester hour must include at least 30 clock hours of instruction; 2) A trimester hour must include at least 30 clock hours of instruction; and 3 ) A quarter hour must include at least 20 hours of instruction.

Merely having coursework that is outside of class does not mean a school can automatically divide by 30. The minimum may be higher than 20 or 30 depending on the amount of out-of-class work that is expected in the different educational activities of a program and may vary depending on the particular activity. The case study that follows illustrates a method for accurately accounting for any out-of-class work a student may have in a course.

Also, the amount of out-of-class work in a particular course or activity in a program does not carry over to other courses or activities.

To determine if the program meets the FSA standard for the minimum number of credit hours for that type of program, schools must use one of the following formulas.

For a semester or trimester hour program

#### Number of clock hours in the credit-hour program

**37.5**

For a quarter hour program

#### Number of clock hours in the credit-hour program

**25**

If a school applies the appropriate formula and finds that a program is eligible, the converted credit hours are used to determine the amount of FSA funds that a student who is enrolled in the program is eligible to receive as explained in *Volume 3, Chapter 1*.

### *Credits approved by state and accrediting agencies*

When some states and accrediting agencies approve programs, they also approve the number of credits in the programs. The credits approved by states and accrediting agencies are **not** necessarily the credits for FSA purposes. For FSA purposes, the number of credits in the program will be those determined by the conversion formula, and they will never be more than those approved by a state or accrediting agency.

### Conversion Case Study (to semester hours)

- A program with 720 clock hours consists of—
  - 5 classroom courses with 120 clock hours each, and
  - A 120 clock-hour externship with no out-of-class student work.
- The institution determines that for—
  - The first 3 classroom courses, a student generally is required to perform 40 hours of out-of-class work for each course, and
  - The last 2 classroom courses have 8 hours of out-of-class work for each course.
- Two options
  - Default option: convert only based on clock hours and ignore any out-of-class work
  - Full formula option: take into account both clock hours and out-of-class work to determine the maximum allowable credit hours
- Four possible outcomes depending on institutional policy for option and rounding (always round down course-by-course):
  - Default option: 19.2 or 18 semester hours
  - Full formula option: 22.026 or 21 semester hours
- Default option: use the default 37.5 clock hours per semester hour, ignoring the out-of-class work (conversion must be course by course)
$$120 / 37.5 = 3.2 \text{ semester hours per course (or 3, if rounding; always round down course-by-course)}$$
  - Converted program =  $3.2 * 6 = 19.2$  semester hours (or  $3 * 6 = 18$  semester hours, if rounding)
- Full formula option
  - Illustrates:
    - Must evaluate on individual coursework components of a program
    - Total clock hours and out-of-class student work is irrelevant
    - Must meet limitation for the minimum number of clock hours per credit hour in addition to out-of-class work
    - Excess out-of-class student work per credit hour does not carry over between courses or educational activities in a program
    - Use exact calculation including any fractions of credit hours or round down any fraction, including a fraction equal to or greater than  $\frac{1}{2}$
    - Rounding on individual course or educational activity, not on the total

## Full formula option

	In-class clock hours		Allowable out-of-class prep hours	Total clock and prep hours	Semester hours	Semester hours (rounded)	Notes
Course #1 (40 hours of actual out-of-class student work)	120	+	$7.5 * 4 = 30$	150	4	4	(A), (C)
Course #2 (40 hours of actual out-of-class student work)	120	+	$7.5 * 4 = 30$	150	4	4	(A), (C)
Course #3 (40 hours of actual out-of-class student work)	120	+	$7.5 * 4 = 30$	150	4	4	(A), (C)
Course #4 (8 hours of actual out-of-class student work)	120	+	8	128	3.413	3	(B), (D)
Course #5 (8 hours of actual out-of-class student work)	120	+	8	128	3.413	3	(B), (D)
Externship (no out-of-class student work)	120	+	0	120	3.2	3	(E)
Total clock hours and out-of-class student work (amount not relevant)				826			
Total semester hours if no rounding					22.026		
Total semester hours if rounding (must round down any fractions to ensure no overawards)						21	

**NOTES:**

**Limitation:** the rules do not allow more than 7.5 hours of out-of-class prep for every 30 hours in class

(A) 120 in-class hours divided by 30 hours = 4      There are 10 hours of out-of-class prep per 30 clock hours ( $40/4 = 10$ ), but cannot have more than 7.5 ( $4 * 7.5 = 30$ )

(B) 120 in-class hours divided by 30 hours = 4      There are 7.5 or fewer hours of out-of-class prep per 30 clock hours ( $8/4 = 2$ ), so use actual hours of out-of-class prep (8)

**Semester hours per course**

(C) 150 total clock and prep hours divided by 37.5 = 4  
 (D) 128 total clock and prep hours divided by 37.5 = 3.413  
 (E) 120 total clock hours divided by 37.5 = 3.2



# FSA Administrative & Related Requirements

*This chapter describes aid-related requirements that a school must meet in order to participate in the Federal Student Aid programs. Many of these requirements require coordination with other offices at your school. For instance, you may wish to share the contents of this chapter with your school's human resources office, because of the requirements for adequate staffing, the incentive compensation prohibition, and hiring restrictions related to the misuse of government funds. Similarly, your school's academic divisions and its business office will need to be aware of the standards for satisfactory progress policies, readmission of servicemembers, and in-state tuition rates for servicemembers and their families.*

## ADMINISTRATIVE REQUIREMENTS FOR THE FINANCIAL AID OFFICE

### Consistency of information & conflicting information

A school must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. A school must resolve discrepancies for all students, not just those selected for verification. Resolution includes determining what information is correct and documenting the school's findings in the student's file.

Such a system must include a review of—

- all student aid applications, need analysis documents, MRRs, POPs from COD, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant,
- the Student Aid Report/ISIR for a student—even if a school has previously verified the information on a student's SAR/ISIR, the school must review all information on subsequent SARs/ISIRs, and resolve discrepancies,
- any documents, including any copies of state and federal income tax returns, that are normally collected by the school to verify information received from the student or other sources, and
- any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, documentation of the student's Social Security number, or other factors relating to the student's eligibility for funds under FSA programs.

For instance, if a student receives an academic scholarship through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's aid application and are counted as estimated financial assistance for the Campus-Based and Direct Loan programs.

## CHAPTER 3 HIGHLIGHTS

- Administrative requirements for the financial aid office
  - Consistency of information; Coordinating official; OIG referrals; Counseling; Adequate staffing; System of checks & balances
- Ownership, employees & contractors
  - Debarment of school owners or staff
  - Certifying employees or contractors
  - Lower-tier covered transactions
  - Crimes involving FSA funds
  - Past performance of affiliated persons
  - Code of conduct
  - Advisory board compensation
- Contracts with 3rd-party servicers
  - Excluded functions/individuals
  - Requirements for contracting
  - Notifying the Department of contracts
- Incentive compensation prohibited
- Required electronic processes
- Exchanging borrower information with NSLDS and DL servicers
- Satisfactory academic progress
- Taking attendance
- Provisions for U.S. armed forces members & families
  - In-state tuition rates for servicemembers & families at public institutions
  - Readmission of servicemembers

## Related information

- Financial Standards, *Chapter 4*
- Consumer & Safety Information, *Chapter 6*
- Records, Electronic Processes, *Chapter 7*
- Campus Safety, Reports & Other Requirements, *Chapter 8*

## FSA Assessments

To assess your school's compliance with these requirements, see the FSA Assessment modules on "Automation" and "Satisfactory Academic Progress" at: [ifap.ed.gov/qahome/fsaassessment.html](http://ifap.ed.gov/qahome/fsaassessment.html)

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## Administrative capability

To participate in the Federal Student Aid (FSA) programs, a school must demonstrate that it is administratively capable of providing the education it promises and of properly managing the FSA programs.  
34 CFR 668.16

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## Death of a student

If a student dies during the award year, the school isn't required to resolve conflicting information.

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## Coordinating official—definition of capable individual

An individual is "capable" if he or she is certified by the state in which the school is located, if state certification is required. Other factors affecting capability include the individual's successful completion of FSA program training provided or approved by the Department, and previous experience and documented success in FSA program administration.

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## OIG referrals

(34 CFR 668.16(g))

Other examples include—

- a school's admissions or registrar's office must provide the aid office with any information it has that might affect a student's eligibility such as the student's enrollment in an ineligible program, or enrollment in summer classes immediately preceding a fall term of enrollment; and
- a school's business office must inform the aid office whenever it receives information about a student receiving an outside scholarship.

There is a distinction between how long you need to be alert for conflicting information and how long you have to actually resolve a conflict. Even if the processing year has ended, you must continue to resolve conflicting information unless—

- all aid for the period of enrollment has been disbursed, and
- at the time of disbursement, there was no conflicting information, and
- the student is no longer enrolled at the school (and is not intending to re-enroll).

You may not ignore a document in your files unless a student is no longer enrolled. If you have conflicting information in your files, you must resolve it as expeditiously as possible. If you become aware of conflicting information for a student who is no longer enrolled, and there is aid to be disbursed, you must resolve the conflict before making the late or postwithdrawal disbursement.

If aid (that the school was unaware of) is received after the end of a period of enrollment for a student who is intending to re-enroll, that aid must be treated as estimated financial assistance for either the period of enrollment just completed, or for the subsequent period of enrollment. (See the discussion of estimated financial assistance and packaging in *Volume 3*.)

Remember, if any office at your school has information that might affect a student's eligibility for FSA funds, it must provide that information to the school's designated coordinating official. That individual, in turn, must forward it to the financial aid office where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

## OIG Referrals

A school must refer to the Department's Office of Inspector General (OIG) any credible information indicating that an applicant for Federal Student Aid may have engaged in fraud or other criminal misconduct in connection with his or her application.

Commonly falsified items include false claims of independent student status, false claims of citizenship, use of false identities, forgery of signatures of certifications, and false statements of income. Remember that fraud is the intent to deceive as opposed to a mistake. If you suspect such intent on the part of a student, report it to the OIG by phoning 1-800-MISUSED.

## Conflicting information

### Sources of conflicting information

- unsolicited tax returns or schedules,
- information provided by the student to the financial aid office,
- supplemental financial aid applications,
- other offices within the school,
- offices at other educational institutions (not just aid offices),
- ED,
- scholarships and information from outside sources,
- state agencies such as Voc. Rehab., WIA, State Scholarship Agencies, etc.,
- tips from outside sources,
- transcripts from other postsecondary institutions,
- SARs or ISIRs,
- verification,
- C Flags,
- Reject Codes, and
- Comment Codes.

### Examples of conflicting information

Conflicting information may include information related to a student's eligibility such as—

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- COA elements,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's EFC.

Conflicting information does not include such things as—

- a household size that differs from number of exemptions on a tax return;
- dependency under IRS rules vs. ED definition of dependency;
- a roster of candidates for an outside scholarship, as opposed to a list of recipients;
- privacy protected information, such as information from professional counselors, chaplains, doctors, etc.;
- assumptions made by the CPS;
- a FAFSA filed using estimated income; and
- a student who has an expired immigration document, but secondary confirmation match is successful.

Schools must also refer to the OIG any third-party servicer who may have engaged in fraud, breach of fiduciary responsibility, or other illegal conduct involving the FSA Programs.

It is always appropriate for a financial aid administrator to consult with a school's legal counsel prior to referring suspected cases of fraud or misconduct to an agency outside of the school. Referrals to the IG are also mentioned in the *Application and Verification Guide*.

### Coordinating official

A participating school must designate a capable individual to administer the FSA programs and to coordinate aid from these programs with all other aid received by students attending the school. To properly package and most effectively use the various types of student assistance (federal, school, state, private, etc.), the coordinating official must be aware of all aid received by students attending the school, regardless of the source. When creating a student's financial aid package, in order to ensure that a student's aid does not exceed his or her need, an aid administrator must include aid the student is receiving from external sources as well as institutional aid and FSA program assistance. Therefore, a school's operations must be administered in a way that ensures all the information the school receives that might affect a student's FSA eligibility is communicated to the coordinating official and to the financial aid office.

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### Separation of function

For further guidance on the separation of functions, contact the appropriate School Participation Team (see “Contacts” on the Financial Aid Professional portal).

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### Family defined

A member of an individual’s family is a parent, sibling, spouse, child, spouse’s parent or sibling’s, or child’s spouse.

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### Control and ownership interest

Definition of control  
34 CFR 600.31(b)  
Ownership interest  
34 CFR 668.15(f)

### *Counseling*

Schools must provide adequate financial aid counseling to all enrolled and prospective students and their families. In addition, schools must also provide entrance and exit counseling for student borrowers in the Perkins and Direct Loan programs. For a complete discussion of loan counseling requirements, see *Chapter 6* in this volume, and *Volume 6: Campus-Based Programs* (for Perkins disclosure requirements).

### *Adequate staffing*

To manage a school’s aid programs effectively, the aid administrator must be supported by an adequate number of professional and clerical personnel. The number of staff that is adequate depends on the number of students aided, the number and types of programs in which the school participates, the number of applicants evaluated and processed, the amount of funds administered, and the type of financial aid delivery system the school uses. What may be adequate at one school may be insufficient at another. The Department will determine, on a case-by-case basis, whether a school has an adequate number of qualified persons, based on program reviews, audits, and information provided on the school’s application for approval to participate in the FSA programs.

### *System of checks and balances*

In addition to having a well-organized financial aid office staffed by qualified personnel, a school must ensure that its administrative procedures for the FSA programs include an adequate system of internal checks and balances. This system, at a minimum, must separate the functions of authorizing payment and disbursing or delivering funds so that no one person or office exercises both functions for any student receiving FSA funds.

Small schools are not exempt from this requirement even though they may have limited staff. Individuals working in either authorization or disbursement may perform other functions as well, but not both authorization and disbursement. These two functions must be performed by individuals who are not members of the same family and who do not together exercise substantial control over the school. If a school performs any aspect of these functions via computer, no one person may have the ability to change data that affect both authorization and disbursement.

While electronic processes enhance accuracy and efficiency, they also can blur separation of functions so the awarding and disbursement occur virtually simultaneously. Schools must set up controls that prevent an individual or an office from having the authority (or the ability) to perform both functions.

In addition, your system also should have controls that prevent cross-functional tampering. For example, financial aid office employees should not be able to change data elements that are entered by the registrar’s office. Finally, your system should only allow individuals with special security classifications to make changes to the programs that determine student need and awards, and it should be able to identify the individuals who make such changes.

## OWNERSHIP, EMPLOYEES & CONTRACTORS

### *Debarment of school owners or staff*

If one of the principals of the school is debarred or suspended by a federal agency, that person is prohibited from participating in any FSA program, so long as the agency's procedures include due process protections that are equivalent to those provided by ED.

The principals of the school include its owners, directors, officers, partners, employees, and any other persons with management or supervisory responsibilities. A principal may also be someone who is not employed by the school but who has critical influence on or substantive influence over a covered transaction (such as the receipt of Pell Grant or Campus-Based funds). For example, a principal may be someone whether or not employed by the school who—

- is in a position to handle federal funds;
- is in a position to influence or control the use of those funds; or
- occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Schools participating in the FSA programs have a fiduciary responsibility to safeguard FSA funds, and ensure those funds are used for the benefit of the students for whom they are intended. We expect participating institutions to thoroughly examine the background of individuals they employ (or are considering employing) in management or supervisory positions. If a school discovers that a person employed in a management or supervisory capacity has been suspended, or debarred by a federal agency, the school must remove that person from such a position or risk losing its FSA eligibility. Moreover, a school may not enter into a relationship (and must terminate an ongoing relationship) with a lender, third-party servicer, or loan servicer the school determines has been debarred or suspended.

### *Certifying current or prospective employees or contractors*

Before a school may receive FSA funding, it must certify that neither the school nor its employees have been debarred or suspended by a federal agency. (You can find this certification in the Program Participation Agreement and in the Web-based FISAP package available to schools participating in the Campus-Based programs.)

The certification provided by the school is a material representation of fact relied upon by the Department when it enters into a Participation Agreement with the school. Moreover, a school is expected to have knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. Although the Department doesn't dictate how a school must ensure that its principals/employees have not been debarred or suspended by a federal agency, we do hold the school responsible for any information it could reasonably have been expected to know in the course of ordinary operations. In addition, we expect the school to expend a reasonable amount of effort ensuring that it and its employees are in compliance. If the Department learns that a prospective participant knowingly rendered an erroneous certification, in addition to other remedies available, the Department may terminate the participation of the institution.

FSA HB Nov 2011

## Debarment and suspension

In order to protect the public interest, it is the policy of the federal government to conduct business only with responsible individuals. In order to implement this policy, the government takes debarment and suspension actions against individuals whom it determines constitute a current risk to federal agencies.

Executive Order 12549

Federal Acquisition Regulations

(48 CFR Part 9, Subpart 9.4)

34 CFR Part 85

Similar debarment and suspension limitations apply to lenders, third-party servicers, loan servicers, and any individuals who provides services described in 34 CFR 668.2 or 682.200 to an FSA recipient whether or not they are employed by the school as described in 34 CFR 600.85.995(b).

## Covered transactions

For purposes of the debarment/suspension rules, covered transactions include:

- disbursement of FSA funds to a student or borrower,
- certification by an educational institution of eligibility for an FSA loan, and
- acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under an FSA program.

## Checking debarment/suspension status online

The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is available for review at the Excluded Parties List System website (maintained by the General Services Administration):

<http://epls.arnet.gov/>

You should keep a copy of the search results in your records.

## Notifying the Department of change of control

A school must report any changes of control under which a person acquires the ability to affect substantially the actions of the school. Such changes in control trigger a review to determine if the school is financially responsible (see *Chapter 5*).



A school chooses the method and frequency for making a determination about the eligibility of its principals. This might include asking current and prospective employees and contractors, in person or in writing, about their debarment or suspension histories. In addition, a school might also examine the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* to find out if an individual or organization is debarred or suspended. A school should discuss with its attorney the procedures appropriate to its circumstances.

The employees who award FSA funds and those who disburse them should always be included in those whose backgrounds are examined. In addition, employees who participate in other transactions from which the regulations exclude individuals who have been debarred or suspended should be included. A school should consult with its attorney on the individuals it must certify.

### Lower-tier transactions

Examples of common lower-tier covered transactions are a school's contracts with a financial aid consultant service or with a loan collection or billing agency.

The debarment or suspension of a person who is not a principal of the school and who does not work in the financial aid office will not affect the school's FSA eligibility, so long as that person is not involved in any covered transactions.

### Lower-tier covered transactions

A school must not enter into lower-tier covered transactions with a debarred or suspended individual or organization. A lower-tier covered transaction is any transaction between a participant in a covered transaction (such as the school) and another individual or organization, if that transaction stems from a covered transaction. A school must obtain a certification from any lower-tier organization if the amount of the lower-tier transaction is \$25,000 or more. The lower-tier organization must inform the school in writing if the organization or its principals are debarred or suspended. Therefore, the certification does not need to be renewed from year to year.

### Sample certification statement from lower-tier organization

The Department disseminated the following language in April 1989 as a model that schools may use to obtain the required certification statement from a lower-tier organization.

"The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal."

*Federal Register*, May 26, 1988, page 19211, disseminated in Dear Colleague Letter GEN-89-21.

### Crimes involving FSA program funds

In order to safeguard FSA funds, schools are prohibited from having as principals or employing or contracting with other organizations that employ individuals who have engaged in the misuse of government funds. Specifically, a school must not knowingly—

- employ in a capacity that involves the administration of the FSA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds;
- contract with a school or third-party servicer that has been terminated from the FSA programs for a reason involving the acquisition, use, or expenditure of federal, state, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material



violation of law involving federal, state, or local government funds; or

- contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been:
  - (1) convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds; or
  - (2) administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

### *Past performance of persons affiliated with a school*

The Department does not consider a school to be financially responsible if any person who exercises substantial control over the school (or any members of the person's family alone or together) owes a liability for an FSA program violation or has ever exercised substantial control over another school (or a third-party servicer) that owes a liability for an FSA program violation, unless that person, family member, school, or servicer demonstrates that the liability is being repaid in accordance with an agreement with the Department.

The Department may consider a school that does not meet this requirement to be financially responsible if the school:

- notifies the Department that the individual repaid to the Department an acceptable portion of the liability, in accordance with the regulations;
- notifies the Department that the liability is currently being repaid in accordance with a written agreement with the Department; or
- demonstrates to the satisfaction of the Department: (1) why the person who exercises substantial control should nevertheless be considered to lack that control, or (2) why the person who exercises substantial control and each member of that person's family does not or did not exercise substantial control over the school or servicer that owes the liability.

### *Code of Conduct*

If a school participates in an FSA loan program, it must publish and enforce a code of conduct that includes bans on:

- revenue-sharing arrangements with any lender,
- steering borrowers to particular lenders or delaying loan certifications, and
- offers of funds for private loans to students in exchange for providing concessions or promises to the lender for a specific number of FSA loans, a specified loan volume, or a preferred lender arrangement.

The code of conduct applies to the officers, employees, and agents of the school and must also prohibit employees of the financial aid office from receiving gifts from a lender, guaranty agency, or loan servicer.

### **Disqualified individuals & PPA**

In its Program Participation Agreement (see Chapter 1), a school agrees to not knowingly employ in a capacity involving the administration of FSA funds, anyone who has pled *nolo contendere* or guilty or has been administratively or judicially determined to have committed fraud or any other material violation of the law involving federal, state, or local government funds.

(34 CFR 668.14(b) (18)(i)).

### **Fidelity bond coverage for employees**

In the past, schools were required to maintain fidelity bond coverage for their employees. This is no longer a federal requirement for schools that participate in the FSA programs. However, by state law some schools are still required to maintain fidelity bond coverage. Even if a school is not required to do so, it may choose to maintain fidelity bond coverage to protect itself when losses occur because of a lack of integrity, on the part of the school's employees or officers.

### **Advisory board compensation**

HEOA Section 1011

Section 140 of the Truth in Lending Act

Disclosures of Reimbursements for Service on

Advisory Boards

HEOA section 1011 HEA section 485(m)

The code must also prohibit financial aid office staff (or other employees or agents with responsibilities with respect to education loans) from accepting compensation for:

- any type of consulting arrangement or contract to provide services to or on behalf of a lender relating to education loans; and
- service on an advisory board, commission, or group established by lenders or guarantors, except for reimbursement for reasonable expenses.

### *Compensation for serving on an advisory board*

A person employed in a financial aid office who serves on an advisory board cannot receive anything of value from the lender but can receive reimbursement for reasonable expenses associated with participation. A school must report annually to ED any such reasonable expenses paid or provided to any employee who is employed in the financial aid office, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution.

The report must include

- the amount of each specific instance of reasonable expenses paid or provided;
- the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;
- the dates of the activity for which the expenses were paid or provided; and
- a brief description of the activity for which the expenses were paid or provided.

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### **Third-party servicer**

34 CFR 668.1, 668.2, 668.11, 668.14, 668.15, 668.16, 668.23, 668.25, 668.81, 668.82, 668.83, 668.84, 668.86, 668.87, 668.88, 668.89, and Subpart H.

### **CONTRACTS WITH THIRD-PARTY SERVICERS**

Schools are permitted to contract with consultants for assistance in administering the FSA programs. However, the school ultimately is responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs or program funds.

The General Provisions regulations contain requirements for all participating institutions that contract with third-party servicers. As defined by regulation, a third-party servicer is an individual or organization that enters into a contract (written or otherwise) with a school to administer any aspect of the school's FSA participation.

Examples of functions that are covered by this definition are:

- processing student financial aid applications, performing need analysis, and determining student eligibility or related activities;
- certifying loans, servicing loans, or collecting loans;
- processing output documents for payment to students, and receiving, disbursing, or delivering FSA funds;
- conducting required student consumer information services;

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### **Institutional liability**

A school remains liable for any and all FSA-related actions taken by the servicer on its behalf.

- preparing and certifying requests for cash monitoring or reimbursement funding, preparing and submitting notices and applications required of eligible and participating schools, or preparing the *Fiscal Operations Report and Application to Participate* (FISAP); and
- processing enrollment verification for deferment forms or Student Status Confirmation Reports.

### *Excluded functions*

Examples of functions excluded from the definition of “third-party servicer” are:

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs) after being initiated by the school;
- publishing ability-to-benefit tests;
- acting as a Multiple Data Entry Processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by a school or warehousing school records;
- participating in a written arrangement with other eligible schools to make eligibility determinations and FSA awards for certain students (see *Chapter 2*); and
- providing computer services or software.

A person or organization performing these functions is not considered to be a third-party servicer and is not subject to third-party servicer requirements.

### *Excluded individuals*

An employee of a school is not a third-party servicer. For this purpose, an employee is one who:

- works on a full-time, part-time, or temporary basis,
- performs all duties on site at the school under the supervision of the school,
- is paid directly by the school,
- is not employed by or associated with a third-party servicer, and
- is not a third-party servicer for any other school.

### *Requirements for contracting with a third-party servicer*

For purposes of administering FSA programs, a school may only contract with an eligible third-party servicer as specified by the regulatory criteria. Under such a contract, the servicer agrees to comply with all applicable requirements, to refer any suspicion of fraudulent or criminal

### **Notifying ED of 3rd-party servicer contracts**

Schools are required to notify the Department of all third-party servicer contracts, and changes to third-party servicer contracts, as described in *Chapter 5*.

If a school has submitted information regarding its third-party servicers as part of applying for certification or recertification, no additional submission is required.

## Referring information to OIG

The regulations provide the following examples of criminal misconduct:

- False claims by the school for FSA program assistance;
- False claims of independent student status;
- False claims of citizenship;
- Use of false identities;
- Forgery of signatures or certifications;
- False statements of income; and
- Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of FSA program funds. (See next section on Incentive Compensation.)



## Incentive compensation in the law & regulations

The prohibition of incentive compensation appears in Section 487(a)(20) of the HEA and in the Student Assistance General Provisions regulations at 34 CFR 668.14(b)(22).

## Definitions

See Table 3 for regulatory definitions of

- Commission, bonus, or other incentive payment
- Securing enrollments or the award of financial aid
- Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid
- Enrollment

## “Safe harbors” exceptions

Regulations issued on October 29, 2010 eliminate the safe harbors effective July 1, 2011.

conduct in relation to FSA program administration to the Department’s Inspector General (see margin), and, if the servicer disburses funds, to confirm student eligibility and make the required Returns to Title IV funds (see *Volume 5*) when a student withdraws.

If the contract is terminated, or the servicer ceases to perform any functions prescribed under the contract, the servicer must return to the school all unexpended FSA funds and records related to the servicer’s administration of the school’s participation in the FSA programs.

A third-party servicer must refer to the Department’s Office of Inspector General any information indicating there is reasonable cause to believe that the school might have engaged in fraud or other criminal misconduct in connection with the school’s administration of, or application for, the FSA programs (see sidebar for examples).



## INCENTIVE COMPENSATION PROHIBITION

Schools may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of FSA program funds.

As stated above, only two types of activities are subject to the incentive compensation ban: securing enrollment (recruitment) and securing financial aid. No other activities are subject to the ban.

The incentive compensation prohibition applies to all individuals with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds. As shown in Table 1, the Department draws a distinction between recruitment activities that involve working with individual students and policy-level determinations that affect recruitment, admission, or the awarding of FSA funds. The Department expects that employees who have titles such as enrollment counselors, recruitment specialists, recruiters, and enrollment managers have sufficiently direct involvement in recruitment that the incentive compensation ban applies to them. Senior managers and executive level employees who are only involved in the development of policy and do not engage in individual student contact or the other covered activities listed in Table 1 will not generally be subject to the incentive compensation ban.



When other activities are coupled with recruitment or securing financial aid, a school must consider how they compensate persons or entities to avoid payments that are prohibited. Table 1 illustrates how these principles would be applied to activities that schools carry out in support of recruitment and financial aid. Payments to persons or entities that undertake or have responsibility for recruitment and decisions related to securing financial aid are subject to the incentive compensation ban even if their work also includes other activities.

Schools may use factors such as seniority or length of employment as a basis for compensating employees covered by the incentive compensation prohibition. Many other qualitative factors may also be used so long as they are not related to the employee's success in securing student enrollments or the award of financial aid. These factors may include such things as job knowledge and professionalism, skills such as analytic ability, initiative in work improvement, clarity in communications, and use and understanding of technology, and traits such as accuracy, thoroughness, dependability, punctuality, adaptability, peer rankings, student evaluations, and interpersonal relations.

**Table 1 : Activities covered by prohibition on incentive compensation**

Covered Activities	Exempt Activities
<i>Activities that are ALWAYS subject to the ban on incentive compensation</i>	<i>Activities NOT subject to the ban on incentive compensation include the following, unless the activities of the employee or entity also involve a covered activity</i>
Recruitment activities, including: <ul style="list-style-type: none"> <li>Targeted information dissemination to individuals;</li> <li>Solicitations to individuals;</li> <li>Contacting potential enrollment applicants; aiding students in filling out enrollment application information</li> </ul>	Marketing activities, including: <ul style="list-style-type: none"> <li>Broad information dissemination;</li> <li>Advertising programs that disseminate information to groups of potential students;</li> <li>Collecting contact information;</li> <li>Screening pre-enrollment information to determine whether a prospective student meets the requirements that an institution has established for enrollment in an academic program;</li> <li>Determining whether an enrollment application is materially complete, as long as the enrollment decision remains with the institution</li> </ul>
Services related to securing financial aid, including completing financial aid applications on behalf of prospective applicants (including activities which are authorized by the Department, such as the FAA Access tool, which can be used to enter, correct, verify, or analyze financial aid application data)	Student support services offered after the point at which financial aid is allowed to be disbursed for a payment period, including: <ul style="list-style-type: none"> <li>General student counseling;</li> <li>Career counseling;</li> <li>Financial aid counseling, including loan management;</li> <li>Online course support - both professional services and computer hardware and software;</li> <li>Academic support services, including tutoring, baimed at student retention, whether that support is provided prior to attendance in classes or after attendance has begun</li> </ul>
	Policy decisions made by senior executives and managers related to the manner in which recruitment, enrollment, or financial aid will be pursued or provided, such as, e.g., decisions to admit only high school graduates

### Incentive compensation

On March 17, 2011, the Department issued additional guidance on incentive compensation. In addition to the tables included in this text, this Dear Colleague Letter provided examples of how the incentive compensation rules are applied, as well as guidance on "tuition sharing" and "profit sharing" and other forms of compensation. See GEN 11-05.

### Two-part test to evaluate if a payment is incentive compensation

1. Is the payment is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered?
2. Is the commission, bonus, or other incentive payment is provided to any person based, in any part directly or indirectly, upon success in securing enrollments or the award of financial aid?

If the answer to each question is "yes," the payment would be prohibited.

See *Session 25: General Provisions and Non-Loan Program Issues—Institutional*, FSA Conference, December 2010

**Table 2 : Types of payments covered by prohibition on incentive compensation**

Types of payment that are direct or indirect payment of incentive compensation	Types of payment that are not direct or indirect payment of incentive compensation
"Tuition sharing" as a measure of compensation when based on a formula that relates the amount payable to the entity to the number of students enrolled as a result of the activity of the entity	Tuition as a source of revenue from which compensation is paid to an unrelated third party for a variety of bundled services (Example 2-B in GEN-11-05)
Profit sharing plans from which distributions are made to individuals based on the number of students enrolled by virtue of covered activities by the recipient (section 668.14(b)(22)(ii)(B))	Profit sharing plans, including 401(k) type plans, from which distributions are made to individuals on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Salary adjustments that take the form of incentive payments based directly or indirectly on success in securing enrollments or financial aid	Employee benefits plans offered to all employees on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Payments based on the application of an admissions policy	Cost of living adjustments (COLAs)
Bonus or other payments based on success in securing enrollments or financial aid	Compensation adjustments based upon seniority
	Payments to faculty based upon student class size or academic achievement
	Payments to senior executives with responsibility for the development of policies that affect recruitment, enrollment, or financial aid
	Payments based upon securing student housing or other student services, including career counseling
	Volume driven arrangements based on services that are not recruitment or securing of financial aid



Table 3 : Definitions

<p><b>Commission, bonus, or other incentive payment</b> A sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.</p> <p><b>Securing enrollments or the award of financial aid</b> Activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.</p> <p>( 1 ) These activities include contact in any form with a prospective student, such as, but not limited to—contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student’s signing of an enrollment agreement or financial aid application.</p> <p>( 2 ) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—</p> <p>( i ) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student’s enrollment agreement or financial aid application; or</p> <p>( ii ) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.</p>	<p><b>Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid</b> ( 1 ) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards FSA funds; and</p> <p>( 2 ) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards FSA funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds.</p> <p><b>Enrollment</b> The admission or matriculation of a student into an eligible institution.</p>
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## Electronic processes cite

34 CFR 668.16 (o)

DCL GEN-04-08, September 2004

Federal Register, 09-14-2004, 55418–55420

## Systems help

For help with questions about specific systems, such as application processing and software (CPS.SAIG), COD, and NSLDS, see the “Help” link on the Information for Financial Aid Professionals site: [ifap.ed.gov](http://ifap.ed.gov)

## REQUIRED ELECTRONIC PROCESSES

Schools must be able to use the FSA electronic processes in order to be considered administratively capable of participating in the FSA programs.

In order for a school to exchange data with the FSA Systems, it must have Internet access through its network or through an Internet Service Provider. Your school will also need to enroll in the Student Aid Internet Gateway (SAIG) and establish a data mailbox. Most schools prepare student data records in a software package such as EDExpress and transmit the records as batch files to the SAIG mailbox. The Department’s systems send edited records back to the SAIG mailbox, where the school downloads the records and uses its software to update the records in its own database.

Schools must use COD’s common record format, complying with the published schema for the corresponding award year, to send and receive origination and disbursement data for Pell Grants, TEACH grants, and Direct Loans. This common record format uses Extensible Markup Language (XML).

## Summary of required electronic processes

To be in compliance with the administrative capability requirements of 34 CFR 668.16(o), a school must—

- use the E-App to submit and update the school’s eligibility information:  
**[www.eligcert.ed.gov](http://www.eligcert.ed.gov)**
- enroll in the Student Aid Internet Gateway (SAIG):  
**[www.fsawebenroll.ed.gov](http://www.fsawebenroll.ed.gov)**
- use *FAA Access* or its SAIG mailbox to exchange FAFSA or ISIR data with the Department’s Central Processing System:  
**<http://www.fafsa.ed.gov/FOTWebApp/faa/faa.jsp> or [www.saigportal.ed.gov](http://www.saigportal.ed.gov)**
- use the COD website or its SAIG mailbox to exchange award and disbursement data for Pell Grants, TEACH grants, and Direct Loans:  
**[cod.ed.gov](http://cod.ed.gov) or [www.saigportal.ed.gov](http://www.saigportal.ed.gov)**
- use the eCampus-Based (eCB) System to file the FISAP application and report (see *Volume 6*):  
**[www.cbfsap.ed.gov](http://www.cbfsap.ed.gov)**
- submit to the National Student Loan Data System (NSLDS) the school’s Federal Perkins Loan data, student enrollment records, FSA program overpayments, and NSLDS Transfer Student Monitoring records:  
**<https://www.nsldsfa.ed.gov/secure/logon.asp>**
- electronically submit the school’s annual compliance and financial statement audits, and any other required audits:  
**[ezaudit.ed.gov](http://ezaudit.ed.gov)**
- use the Default Management website to receive its draft and official cohort default rate data electronically: **[ifap.ed.gov/DefaultManagement](http://ifap.ed.gov/DefaultManagement)**
- use the Information for Financial Aid Professionals (IFAP) website to review Dear Colleague Letters, announcements, or Federal Registers: **[ifap.ed.gov](http://ifap.ed.gov)**

To create and edit student records, your school may use the Department's EDEXpress software, or develop its own software, or rely on a third-party software vendor. If you are not using EDEXpress software to prepare your records, it is your responsibility to ensure that the software you use is capable of generating COD records in XML format.

As an alternative, you can now create and edit student records directly on many of our Web sites, such as COD, CPS, and NSLDS. When creating and editing records on the Web, you do not use PC software and you do not have to transmit the changes through your SAIG mailbox.

### *Information for Financial Aid Professionals (IFAP)*

Program information is communicated through our IFAP website ([ifap.ed.gov](http://ifap.ed.gov)) in the form of electronic announcements, Dear Colleague letters, and Federal Registers. One of the most useful features of this website is its notification service, which sends you daily or weekly e-mails that summarize recent postings to IFAP. (Go to "Member Services" on IFAP and select Subscription Options after you've registered.)

Even if you use a third-party servicer to manage your student aid activities, you are responsible for knowing about all new requirements posted on IFAP.

The IFAP site also has links to all major FSA Web sites and services, and a "Help" link that includes contact information for FSA call centers and customer service offices.

### *Minimum systems requirements*

In the past, ED has issued the minimum system requirements schools must meet in order to participate in the Department's electronic processes. (The most recent issuance was for 2005–2006, and gave an optimal configuration of 2.8 GHz/333 MHz Processor and 80 GB hard drive with a high speed Internet connection.) When reviewing your office's computer needs, you should be aware that its system requirements (processor speed, RAM, hard-drive storage, etc.) will depend on which FSA functions the school uses, the number of records processed, and school database interfaces.

## **SHARING INFORMATION WITH NSLDS, DL SERVICERS & GUARANTORS**

### *Reporting student enrollment data to NSLDS*

All schools participating (or approved to participate) in the FSA programs must have some arrangement to report student enrollment data to the National Student Loan Data System (NSLDS) through a Roster file (formerly called the Student Status Confirmation Report or SSCR).

Student enrollment information is extremely important, because it is used to determine if the student is still considered in school, must be moved into repayment, or is eligible for an in-school deferment. For students moving into repayment, the out-of-school status effective date determines when the grace period begins and how soon a student must begin repaying loan funds.

## **Enrollment Reporting Requirements**

34 CFR 682.610 FFEL

34 CFR 685.309(b) Direct Loans

"Dear Colleague" letter GEN-96-5

"Dear Colleague" letter GEN-96-17

See "NSLDS Reference Materials" on IFAP for NSLDS Newsletters, Updates, and other information

## **Receiving Roster Files**

A school (or its servicer) must sign up to receive Roster Files through the SAIG Enrollment site  
[www.fsawebenroll.ed.gov/PMEnroll/index.jsp](http://www.fsawebenroll.ed.gov/PMEnroll/index.jsp)

## **Updating enrollment information on the Web**

You can create or update student enrollment status by using the "Enroll" tab on the NSLDS Professional Access site:

**<https://www.nslsdfap.ed.gov/>**

Support: **1-800-999-8219**

## **Enrollment Reporting/SSCR Technical References**

For more information on reporting enrollment information to NSLDS, including record layouts, error codes, etc., see the **Enrollment Reporting Guide** (formerly the SSCR User's Guide), which is available online on the **ifap.ed.gov** site (see NSLDS Reference Materials > NSLDS User Documentation)

If you will be using the SSCR software package for Enrollment Reporting, see the **SSCR Desk Reference**, which includes record layouts, error codes, etc. and is available at:  
**[www.fsadownload.ed.gov](http://www.fsadownload.ed.gov)**

## Enrollment Status Codes

These codes are listed in the Record Layouts in the SSCR Technical Reference. Data submitted to the Student Loan Clearinghouse uses most of these codes.

A = Approved Leave of Absence

D = Deceased

F = Full-time

G = Graduated

H = Half-time or more, but less than full-time

L = Less than half-time

W = Withdrawn (voluntary or involuntary)

X = Never attended

Z = Record not found

At scheduled times during the year, not less than semiannually, NSLDS sends a Roster file electronically to your school (or its designated servicer) through its SAIG mailbox. The file includes all of the school's students who are identified in NSLDS as Stafford (Direct and FFEL) borrowers (or the beneficiaries of a PLUS loan). The file is not necessarily connected to loans made at your school—you also must report information for students who received some or all of their FSA loans at other schools but are currently attending your school.

Your school (or servicer) must certify the information and return the Roster file within 30 days of receiving it. You may also go to [www.nsldsfa.ed.gov](http://www.nsldsfa.ed.gov) and update information for your students online. You're required to report changes in the student's enrollment status, the effective date of the status and an anticipated completion date. Changes in enrollment to less than half-time, graduated, or withdrawn must be reported within 30 days. However, if a Roster file is expected within 60 days, you may provide the data on that Roster file.

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## Privacy: Sharing student records with lenders

A student authorizes his or her school to release information to lenders by signing the promissory note as part of the loan application process. This authorization covers information relevant to the student's or parent's eligibility to borrow as well as locating the borrower. Examples of such information are enrollment status, financial assistance, and employment records. See *Chapter 7* for more information about recordkeeping and privacy.

If the Roster file that you are returning contains records that don't pass the NSLDS Enrollment Reporting edits, you will receive a response file with the records that didn't pass. Within 10 days, you'll need to make the necessary corrections to these records and resubmit them. If you are using a servicer, you may need to assist the servicer in correcting these errors. Please remember that your school is ultimately responsible for notifying NSLDS of student enrollment changes.

If your school reports enrollment data to the NSLDS, it does not have to complete SSCRs received directly from guaranty agencies. (Receiving an SSCR report from a guaranty agency may be an indication that your school has not reported to NSLDS within the last six months.) However, you must still respond to requests for borrower information from guaranty agencies, lenders, and loan servicers. You must continue to provide loan holders and loan servicers with a borrower's enrollment status and other information needed to locate the borrower for deferment and other repayment purposes.

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## Loan information from the guarantor

Upon request, the guarantor must inform the school of students in default on FFELs. 34 CFR 682.401(b)(24)

If the lender requests preclaims assistance, the guarantor must inform the school of this request, if the school has requested such notification.

34 CFR 682.404(a)(4)

Sec. 428(c)(2)(H) of the HEA

The guarantor must notify the school when a loan made at that school changes hands, if the school requests such information.

Sec. 428(b)(2)(F) of the HEA

34 CFR 682.401(b)(25)

## *Updating borrower information at separation*

Within 60 days after the exit counseling session, your school must provide the Direct Loan servicer (or the guaranty agency for FFEL) that was listed in the borrower's student aid records any updated information about: the borrower's name; address; references; future permanent address; Social Security number; the identity and address of the borrower's expected employer; the address of the borrower's next of kin; and the borrower's driver's license number and state of issuance.

## *Sharing information about delinquent/defaulted borrowers*

To promote loan repayment, DL schools are encouraged to notify the appropriate Direct Loan servicer if they receive new information about a delinquent borrower's location or employment.

The Direct Loan servicers send electronic reports to participating schools listing all delinquent and defaulted Direct Loan borrowers who took out loans while attending the school. The report, which contains the borrowers' names, addresses, and phone numbers, is organized by the number of days

past due so that schools can contact and counsel borrowers to avoid default. The school may also wish to work with borrowers who have defaulted on their Direct Loans to help these borrowers bring their loans out of default.

A former FFEL school may make agreements to provide the holders of delinquent loans with information about the delinquent borrower's location or employment. The school may also try to contact the borrower and counsel him or her to avoid default.

Former FFEL schools may ask a guaranty agency to provide information about students who were enrolled at the school who have defaulted on their Stafford loans. The guarantor may not charge for this information. The school may also ask the guarantor to notify the school whenever a lender requests default aversion assistance on a loan made at your school, and provide the borrower's name, address, and Social Security number. (The guaranty agency may charge a reasonable fee for this service.) Your school may only use the information to remind the borrower to repay his or her loan(s).

If you've requested it, the guaranty agency must also notify your school when loans to its students are sold, transferred, or assigned to another holder. (The notification must include the address and telephone number of the new loan holder.) This notification requirement only applies to loans that are in the grace period or in repayment, and only if your school was the last school the borrower attended before the loan entered repayment. (For instance, if a student received several Stafford loans while earning a bachelor's degree at your school, but pursued a master's degree at another school before those loans entered repayment, the guarantor is not required to notify you if the loan is sold.)

### *Financial Aid History & Transfer Monitoring*

A school must consider a student's financial aid history in making FSA program awards. The regulations require that schools use NSLDS data to obtain information about a student's financial aid history.

In order to receive students' financial aid history, your school must register for the Transfer Student Monitoring Process.

Through the transfer student monitoring process, NSLDS will monitor a transfer student's financial aid history and alert you to any relevant changes—other than the default and overpayment information reported in the postscreening process—that may affect the student's current award(s).

You must send NSLDS identifying information for students transferring to your school so that NSLDS can use transfer monitoring to notify you of changes to the student's financial aid history. You may send information for students who have expressed an interest in attending your school, even if they have not yet formally applied for admission.

You can find a complete discussion of this requirement and the transfer student monitoring process in *Volume 1, Chapter 3*.

### **Financial aid history**

34 CFR 668.19

DCL GEN-00-12

DCL GEN-01-09, July 2001 (including July 16, 2001, update)

### **Transfer student monitoring process**

You must verify the eligibility of transfer students for FSA funds. You may either check the student's financial aid history on the NSLDS Professional Access site, or wait seven days after you've submitted the student's information for monitoring to receive a response from NSLDS.

To begin using the "inform" feature, you must designate a contact on the "School Transfer Profile" page at:

**[www.nslsdfap.ed.gov](http://www.nslsdfap.ed.gov)**

## Satisfactory progress references

School policy:  
34 CFR 668.16(e),  
Student eligibility:  
34 CFR 668.32(f),  
34 CFR 668.34

## Recent changes to satisfactory progress

The October 29, 2010, regulations made significant changes that may affect your school's satisfactory academic progress policy.

Please be sure to read *Volume 1, Chapter 1* for a comprehensive description of those changes.



## SATISFACTORY ACADEMIC PROGRESS

To be considered administratively capable, a school must have a satisfactory academic progress policy that, for an FSA recipient, is the same as or more strict than the school's standards for a student enrolled in the same educational program who is not receiving assistance under an FSA program.

Because satisfactory progress issues are most often raised in specific student eligibility cases, we discuss the details of satisfactory progress standards in *Volume 1, Chapter 1* of the FSA Handbook. You should carefully review the discussion in *Volume 1* if your school is developing or amending its satisfactory progress policy.

### *Basic elements of a satisfactory progress policy*

As discussed in *Volume 1*, a school's policy must include certain basic elements that are measured at least annually:

- a qualitative component consisting of grades or comparable factors that are measurable against a norm,
- a quantitative component that consists of a maximum time-frame in which a student must complete his or her educational program, subdivided into increments, and
- measurement of progress at the end of each increment.

In addition, your school's policy must explain:

- the effect of ESL courses and remedial courses on progress,
- how progress is measured if a student changes majors or seeks to earn additional degrees,
- how course repetitions are handled,
- the procedures for appealing a satisfactory progress determination, and
- the procedures for re-establishing satisfactory progress.

The policy must include provisions for consistent application of the standards to all students within categories (e.g., full-time, part-time, undergraduate, and graduate students), and educational programs established by the school. Generally, the quantitative and qualitative standards used to judge academic progress include all periods of the student's enrollment. Even periods in which the student did not receive FSA funds must be counted.

### *"C" average required after 2 years*

In addition to any school-determined standards, federal law requires that a student enrolled in a program of study of more than 2 academic years must, once the student has been enrolled for two academic years, have a "C" average or its equivalent, *or have an academic standing consistent with the school's requirement for graduation*. If your school does not use letter grades, it must define the equivalent of a "C" average.



## TAKING ATTENDANCE

A school is required to take attendance if—

- an outside entity (such as the school's accrediting agency or a state agency) has a requirement that the institution take attendance;
- the school itself has a requirement that its instructors take attendance; or
- the school or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

See the regulatory text in the margin for further information.

## PROVISIONS FOR U.S. ARMED FORCES MEMBERS & FAMILY

### *In-state tuition rates for active-duty servicemembers & family attending public institutions*

A public postsecondary school may not charge a member of the armed forces who is on active duty for a period of more than 30 days more than the school's tuition rate for residents of the state. Similarly, the servicemember's spouse and dependent children are entitled to the in-state tuition rate.

In addition, if the servicemember, spouse, or dependent child pays the in-state tuition rate, the public institution must allow them to continue to pay such a rate as long as the individual is continuously enrolled, even if there is a subsequent change in the permanent duty station of the servicemember to a location outside of the state.

### *Readmission of servicemembers*

A school must promptly readmit a servicemember with the same academic status as he or she had when last attending the school or accepted for admission to the school. This requirement applies to any student who cannot attend school due to military service (see sidebar for definition).

The student must notify the school of his or her military service and intention to return to school, as follows:

- *Notification of military service.* The student (or an appropriate officer of the Armed Forces or official of the Department of Defense) must give oral or written notice of such service to the school as far in advance as is reasonable under the circumstances. This notice does not have to indicate whether the student intends to return to the school and may not be subject to any rule of timeliness. (Timeliness must be determined by the facts in any particular case.) Alternatively, at the time of readmission, the student may submit an attestation of military service that necessitated the student's absence from the school. No notice

## Taking attendance

The requirement for a school to take attendance is relevant to the calculations for the Return of Title IV Aid when a student withdraws from an academic program. See *Volume 5, Chapter 2* for a discussion of Return of Title IV Aid.

668.22(b) \*\*\*

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

Amendment published October 29, 2010  
Effective Date: July 1, 2011

## Definitions for tuition rates for military families

**Armed forces**—the Army, Navy, Air Force, Marine Corps, and Coast Guard.

**Active duty**—full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

**Active duty for a period of more than 30 days**—active duty under a call or order that does not specify a period of 30 days or less. 20 USC 1015d

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## Definitions for readmission

For purposes of this discussion—

**Military service (or service in the uniformed services)**—service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days. (Does not include National Guard service under state authority.)

**Servicemember**—someone who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

**Appropriate officer**—A warrant, commissioned, or noncommissioned officer authorized to give such notice by the military service concerned.

is required if precluded by military necessity, such as service in operations that are classified or would be compromised by such notice.

- *Notification of intent to return to school.* The student must also give oral or written notice of his or her intent to return to the school within 3 years after the completion of the period of service. A student who is hospitalized or convalescing due to an illness or injury incurred or aggravated during the performance of service must notify the school within 2 years after the end of the period needed for recovery from the illness or injury. A student who fails to apply for readmission within these periods does not automatically forfeit eligibility for readmission, but is subject to the school's established leave of absence policy and general practices.

A school must designate one or more offices that a student may contact to provide notification of service and notification of intent to return. The school may not require that these notices follow any particular format.

The school must promptly readmit the student into the next class or classes in the student's program beginning after the student provides notice of intent to reenroll, unless the student requests a later date or unusual circumstances require the school to admit the student at a later date. This requirement supersedes state law—for example, a school must readmit a qualifying servicemember to the next class even if that class is at the maximum enrollment level set by the state.

The school must admit the student with the same academic status, meaning—

- to the same program to which the student was last admitted or, if that exact program is no longer offered, the program that is most similar to that program, unless the student chooses a different program;
- at the same enrollment status, unless the student wants to enroll at a different enrollment status;
- with the same number of credit hours or clock hours previously completed, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable, and
- with the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had.

If the student is readmitted to the same program, for the first academic year in which the student returns, the school must assess the tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the school.

- If veterans' education benefits or other servicemember education benefits will pay the amount in excess of the tuition and fee charges assessed for the academic year in which the student left the school, the school may assess up to the amount of tuition and fee charges that other students in the program are assessed for that academic year.

- If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, the school must assess no more than the tuition and fee charges that other students in the program are assessed for that academic year.

The cumulative length of the absence and of all previous absences from the school for military service may not exceed 5 years. Only the time the student spends actually performing service is counted. (See the chart on the next page for additional rules pertaining to cumulative length of absence.)

### **Reasonable efforts to help prepare student**

If the school determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the school must make reasonable efforts at no extra cost to help the student become prepared or to enable the student to complete the program. This includes providing refresher courses and allowing the student to retake a pretest at no extra cost.

The school is not required to readmit the student if it determines—

- that there are no reasonable efforts it can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program.
- after it makes reasonable efforts, that the student is not prepared to resume or complete the program.

The school carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

- “Reasonable efforts” means actions that do not place an undue hardship on the institution.
- “Undue hardship” means an action requiring significant difficulty or expense when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

### **Termination for bad conduct**

A student’s readmission rights terminate in the case of a dishonorable or bad conduct discharge, general court-martial, federal or state prison sentence, or other reasons as described in 34 CFR 668.18(h).

## Readmission for servicemembers—additional information

### 34 CFR 668.18 (a) General

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(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

### 668.18 (e) Cumulative length of absence.

For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

- (1) That is required, beyond five years, to complete an initial period of obligated service;
- (2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or
- (3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—
  - (i) Ordered to or retained on active duty under—
    - (A) 10 U.S.C. 688 (involuntary active duty by a military retiree);
    - (B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);
    - (C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);
    - (D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);
    - (E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);
    - (F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);
    - (G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);
    - (H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);
    - (I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);
    - (J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);
    - (K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or
    - (L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

### 668.18 (g) Documentation.

(1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

- (i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and
- (ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

- (A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.
- (B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.
- (C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.
- (D) Certificate of completion from military training school.
- (E) Discharge certificate showing character of service.
- (F) Copy of extracts from payroll documents showing periods of service.
- (G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.
- (ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.
- (3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

# Audits, Financial Standards, Limitations & Cohort Rates

*Schools that participate in the FSA programs are generally required to have annual compliance and financial statement audits. This chapter will discuss the audit requirement and the financial standards and limitations that apply to a school's FSA eligibility. In addition, we will discuss the annual calculation of a school's cohort default rate.*

## FSA AUDIT REQUIREMENTS FOR SCHOOLS

A school that participates in any FSA program, including a participating foreign school, generally must have an independent auditor conduct an annual audit of the school's compliance with the laws and regulations that are applicable to the FSA programs in which the school participates (a compliance audit), and an audit of the school's financial statements (a financial statement audit).

While a compliance audit covers the school's administration of the FSA programs, a financial statement audit provides the Department with information necessary to evaluate a school's status *vis-a-vis* the financial standards that are discussed later in this chapter.

The type of compliance audit a school or servicer must undergo depends on its type of control: public, for-profit, or nonprofit.

- All for-profit schools must have an FSA compliance audit conducted under the Inspector General's *Audit Guide* (for FSA school audits), which is available on the IFAP website.
- Public and nonprofit schools must comply with the Single Audit Act. The Single Audit Act requires these schools to have an audit conducted in accordance with the Office of Management and Budget's (OMB) Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations. (Circular A-133 allows an FSA compliance audit under the criteria of the *Audit Guide* under limited circumstances.)

The Office of Inspector General (OIG) also conducts audits, usually in cases where there is concern over a school's administration of the FSA programs. An OIG or other federal audit does not satisfy the requirement that a school have annual compliance and financial statement audits performed by an independent public accountant.

Note that audit requirements also apply to third-party servicers. However, a school may never use a third-party servicer's audit in place of its own required audit, because the school is ultimately liable for its own violations as well as those incurred by its third-party servicers.

## CHAPTER 4 HIGHLIGHTS

- FSA Audit Requirements for Schools
- Timing of Audit Submissions
- Standards & Guidelines for FSA Audits
- 90/10 revenue test
- Audits and the Audit Review Process
- Audits for 3rd-party servicers
- Demonstrating Financial Responsibility
- Standards for Financial Responsibility
- Alternatives to the General Financial Standards
- Past Performance & Affiliation Standards
- Limitations
- Cohort Default Rate

## Related information

- Administrative Requirements, Chapter 3
- Program reviews, Chapter 9

## School Participation Teams

For information regarding accounting and compliance issues, a school should contact the School Participation Team for its region. See the contact information on the IFAP website ([ifap.ed.gov](http://ifap.ed.gov)).

## Audit requirements & waiver

HEA: Sec. 487(c)  
20 USC 1094  
34 CFR 668.23(a)(1) to (5)  
Waiver: 34 CFR 668.27



### Independent CPA/auditor

An independent certified public accountant or government auditor, except that a government auditor must meet the Government Auditing Standards qualification and independence standard, including standards related to organizational independence.

### Opportunity to send comments to Small Business Ombudsman

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually will evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Department of Education, call 1-888-REG-Fair (1-888-734-3247).

### Fiscal year for 2011–2012

For schools using a calendar year as their fiscal year, their most recently completed fiscal year is the one that ends on December 31, 2011. For those schools using the award year as their fiscal year, their most recently completed fiscal year will be the one that ends on June 30, 2012.

## TIMING OF AUDIT SUBMISSIONS

### Simultaneous FSA audit submissions

A school that has an audit performed under the *Audit Guide* for FSA schools must submit both the compliance audit and the audited financial statements within six months of the end of the school's fiscal year. Both audits must be prepared by an independent public accountant in accordance with the Generally Accepted Accounting Principles (GAAP) and audited in accordance with the Generally Accepted Government Auditing Standards (GAGAS). The compliance audit and financial statement audit may be performed by different auditors. However, the audits must be submitted as one package.

Both the compliance audit and the financial statement audit must be performed on a fiscal-year basis. In cases where the school's fiscal year does not coincide with an award year, the school's compliance audit will cover parts of two award years (see example below).

### Example: school's fiscal year ≠ FSA award year



### Submission dates for FSA audits

A school's or servicer's annual compliance and financial statements audits performed under the *Audit Guide* must be based upon the fiscal year and submitted to the Department within six months after the end of the school's or servicer's fiscal year. (These requirements do not apply to audits performed under the Single Audit Act that are due as specified in OMB Circular A-133.)

The chart on the next page lists audit due dates and the period the audit must cover. (The chart provides information for the most common institutional fiscal-year-end dates.)

Generally, a school's first audit performed under these requirements must cover the entire period of time since the school began to participate in the FSA programs. Each subsequent audit must cover the period since the end of the period covered by the preceding audit that is accepted by the Department.



Audit submission due dates	School's fiscal year end date		Both audits due		Period audited (financial & compliance)
	Sept 30, 2011	➡	March 31, 2012	➡	Oct 1, 2010 through Sept 30, 2011
	Dec 31, 2011	➡	June 30, 2012	➡	Jan 1, 2011 through Dec 31, 2011
	March 31, 2012	➡	Sept 30, 2012	➡	April 1, 2011 through March 31, 2012
	June 30, 2012	➡	Dec 31, 2012	➡	July 1, 2012 through June 30, 2012

### Waivers of requirement for an annual FSA audit

A school may request a waiver of the requirement for an annual audit for up to three years.

- A proprietary school must have disbursed less than \$200,000 dollars in each of the two most recently completed award years to be eligible for the waiver. (The school must also meet the other regulatory conditions in 34 CFR 668.27.)
- A public or private nonprofit institution that expends less than \$500,000 in federal funds in a fiscal year is exempt from filing compliance audits after the school gains initial eligibility.

If the waiver is approved, at the end of the waiver period the school must submit a compliance audit covering each individual fiscal year in the waiver period and a financial statement audit for the last year of the waiver period.

This exception to the annual audit requirement may not be granted for the award year preceding a school's required recertification.

If the Department grants the waiver, the school does not have to submit its compliance or audited financial statement until six months after—

- the end of the third fiscal year following the fiscal year for which the school last submitted a compliance audit and audited financial statement; or
- the end of the second fiscal year following the fiscal year for which the school last submitted compliance and financial statement audits if the award year in which the school will apply for recertification is part of the third fiscal year.

A school's waiver request may include the fiscal year in which that request is made, plus the next two fiscal years.

A school remains liable for repaying any FSA funds it improperly expends during the waiver period. A compliance audit is the vehicle for discovering improper expenditures. Therefore, a school will be required to pay any liabilities when the school eventually submits a compliance audit for the fiscal years in which it made improper expenditures.

### Audits required at end of waiver period

The regulations do not waive the requirement that a school audit its administration of the FSA programs; they waive the requirement that these audits be submitted on an annual basis. Therefore, if a school is granted a waiver for 3 years, when the waiver period expires and the school must submit its next compliance audit, that audit must cover the school's administration of the FSA programs since the end of the period covered by its last submitted compliance audit.

The auditor for a proprietary school must attest to, the school's annual 90/10 determination for each individual year in the waiver period (in accordance with 34 CFR 668.23(d)(4)).

### Rescinding the waiver

The Department rescinds a waiver if the school:

- disburses \$200,000 or more of FSA program funds for an award year;
- undergoes a change in ownership that results in a change of control; or
- becomes the subject of an emergency action or a limitation suspension, fine, or termination action initiated by the Department or a guaranty agency.

## Qualifying for waiver

To qualify for a waiver, a school must demonstrate that it:

- is not a foreign school;
- disbursed less than \$200,000 in FSA program funds during each of the two completed award years prior to the audit period;
- agrees to keep records relating to each award year in the unaudited period for two years after the end of the regular record retention period for the award year;
- has participated in the FSA programs under the same ownership for at least three award years preceding the school's waiver request;
- is financially responsible under the general requirements of financial responsibility, and does not rely on the alternative standards and requirements of exceptions to participate in the FSA programs;
- is not receiving funds under the reimbursement or cash monitoring system of payment;
- has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guaranty agency in the three years preceding the school's waiver request;
- has submitted its compliance audits and audited financial statements for the previous two fiscal years, and no individual audit disclosed liabilities in excess of \$10,000; and
- submits a letter of credit in the amount as determined below, which must remain in effect until the Department has resolved the audit covering the award years subject to the waiver. For purposes of this section, the letter of credit amount is 10% of the total FSA program funds the school disbursed to or on behalf of its students during the award year preceding the school's waiver request.

## Examples of effects of waivers

Example 1: The school is still required to have its administration of the FSA programs audited for the waiver period. If a school is granted a waiver for three years, when the waiver period expires, the next audit must cover the school's administration of the FSA programs since the end of the period covered by its last submitted compliance audit. For example, if a school's fiscal year coincides with an award year (July 1–June 30), it submits a compliance audit for its fiscal year that ends on June 30, 2011, and then receives a waiver so that its next compliance audit is due six months after the end of its 2013–2014 fiscal year. When it submits that audit, it must cover the 2011–2012, 2012–2013, and 2013–2014 fiscal years.

Example 2: If a school's fiscal year ends June 30, 2011, and the school receives a waiver on May 1, 2011, the next compliance audit is due six months after the end of the school's 2013–2014 fiscal year.

## STANDARDS & GUIDELINES FOR FSA AUDITS

### ***Audited financial statement requirement***

A school's audited financial statement must cover the school's most recently completed fiscal year. The Department uses the information in a school's audited financial statement to evaluate the school's status *vis-a-vis* the financial standards discussed in this chapter. In addition to a school's audited financial statement, the Department may require that the school submit additional information. For example, the Department may require a school to submit or provide access to the auditor's work papers. Also, if the Department finds it necessary to evaluate a particular school's financial condition, the Department can require a school to submit audited financial statements more frequently than once a year.

### ***FSA compliance audits***

Compliance audits must be conducted in accordance with the general standards and the standards for compliance audits contained in the U.S. General Accountability Office's (GAO's) Government Auditing Standards. In addition, the auditor should use the following guidance, based on school type:

- Public and private nonprofit schools audited under Single Audit Act: OMB Circular A-133.
- For-profit schools, foreign schools, and third-party servicers: the latest *Audit Guide* for the FSA programs (see sidebar).

In conducting an audit, the auditor may also find it useful to consult the accounting and recordkeeping manual for the FSA programs (known as *The Blue Book*), and the *G5 Users Guide*, as applicable.

A school (or third-party servicer) may use the same independent auditor or auditing firm for its required nonfederal audit as the one that usually audits its fiscal transactions. To produce unbiased conclusions, the auditor must be independent of those authorizing the expenditure of FSA funds.

The Department may require a school to provide a copy of its compliance audit report to guaranty agencies, lenders, state agencies, other federal agencies, or accrediting agencies.

### ***Single Audit Act (A-133 audit) guidelines***

Nonprofit and public schools are required to have audits performed under the guidelines of the Single Audit Act. (These audits are also known as "A-133 audits" because the audit guidelines are established in OMB Circular A-133). A-133 audits satisfy the Department's audit requirements.

A-133 audits have distinct auditing and submission requirements and must be submitted to the Federal Audit Clearinghouse. (A copy of the audit must also be submitted to the Department through the eZ-Audit website.) A school submitting an audit under the guidelines of the Single Audit Act must use the submission deadlines established by the Single Audit Act.

### **Audit Guide (for FSA programs)**

The official title of the Inspector General's audit guide for the FSA programs is *Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers*.

The Audit Guide and the "Blue Book" are available on the IFAP website ([ifap.ed.gov](http://ifap.ed.gov)) under "Publications."

The G5 Users Guide is available at <https://www.g5.gov/>

### **Financial statements must use accrual basis & GAAP standards**

Financial statements must be prepared on an accrual basis in accordance with generally accepted accounting principles (GAAP), and audited by an independent auditor in accordance with GAGAS and other guidance contained in OMB Circular A-133, or in the Department's *Audit Guide* (for FSA school audits).

### **Circular A-133 & the Single Audit Act**

Office of Management and Budget (OMB) Circular A-133 was issued pursuant to the Single Audit Act of 1984. The Single Audit Act was amended in 1996—the current requirements are found in Chapter 75 of title 31, U.S. Code.

Circular A-133 is titled "Audits of States, Local Governments, and Nonprofit Organizations" and is applicable to nonprofit postsecondary schools, states, local governments, and Indian tribal governments. For many schools, this is a combined audit of all the federal programs at that school. OMB circular A-133 is available through the OMB Home Page at

[www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)

### Submitting A-133 audits

The Form SF-SAC and the Single Audit Reporting packages for fiscal periods ending on or after January 1, 2008, must be submitted online to the Federal Audit Clearinghouse <http://harvester.census.gov/sac/>

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### Annual financial statement

Section 487(c) of the HEA provides that all schools participating in the Federal Student Aid programs must submit *annual financial statements* to the Department. This applies to all schools, including non-profit schools that are otherwise exempt from submitting annual audited financial statements under the A-133 standards.

### Exemptions

A school that expends less than \$500,000 of federal funds during a fiscal year is exempt from submitting an annual A-133 audit. However, a school that spends less than \$500,000 in all federal funds is still required to submit a financial statement to the Department within 6 months after the close of its fiscal year. The financial statement does not have to be audited by a CPA, and may be created as compiled or reviewed statements. If the school has prepared a set of audited financial statements for its own use or for another entity, the school must submit those audited financial statements to the Department no later than 6 months after the end of the institution's fiscal year.

Circular A-133 permits the submission of program-specific audits if an entity expends funds in only one federal program *and* the program's regulations do not require a financial statement audit. The FSA program regulations require a financial statement audit. Therefore, a school may not submit a program-specific audit to satisfy the Department's audit submission requirements.

Circular A-133 also now allows an independent auditor to use professional judgment to determine whether certain federal programs must be included in the scope of an audit. An independent auditor can exclude certain program components, such as FSA program funds, if they fall below a predetermined dollar and risk threshold.

The independent auditor must make an annual assessment of the dollar and risk conditions, determine whether such exclusions are appropriate, and whether any FSA programs must be included within the scope of the audit. You can find additional information on this topic in the latest Compliance Supplement to Circular A-133.

### FSA consolidated statements

In some cases, a school's relationship with another entity may cause the Department to require a school to submit additional financial statements both of the school and the entity, such as audited consolidated financial statements; audited full consolidated financial statements; audited combined financial statements; or, under certain circumstances, audited financial statements of one or more related parties. This occurs when the Department determines that the activities or financial health of another entity may impact upon the school's total financial health. So that the Department can make this determination, a school must include in its audited financial statements a detailed description of related entities based on the definition of a related entity in the *Statement of Financial Accounting Standards* (SFAS) 57. In addition, the description must include all related parties and a level of detail that would enable the Department to readily identify the related party. This information may include, but is not limited to, the name, location, and description of the related entity, including the nature and amount of any transaction between the related party and the school, financial or otherwise, regardless of when it occurred.

## 90/10 REVENUE TEST

A proprietary school must disclose the percentage of its revenues derived from the FSA programs that the school received during the fiscal year covered by the audit as a footnote to its audited financial statements. The school must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668 (see sidebar).

A school that converts from a for-profit to a nonprofit status must report its compliance with the 90/10 revenue test for the first year after its conversion. A school changing from for-profit to nonprofit must continue to file this report for the first year of its nonprofit status.

To be eligible for FSA participation, a proprietary school must derive at least 10% of its revenues for each fiscal year from sources other than the FSA programs, or be subject to sanctions. The calculation of this percentage and the funds included must be arrived at using the cash basis of accounting. A school must determine its revenue percentages using the formula described in the chart on the following pages each fiscal year.

Proprietary schools have 45 days after their most recent fiscal year has ended to report to the Department if they did not satisfy the 90/10 Rule for that period.

- If a school fails to satisfy the 90/10 rule for any fiscal year, it becomes provisionally certified for up to two fiscal years after the fiscal year it failed to satisfy the revenue requirement. (Among other factors, the provisional certification is limited by the expiration date of the school's program participation agreement.)
- If a school fails to satisfy the 90/10 rule for two consecutive fiscal years, it loses its eligibility to participate in the FSA programs for at least two fiscal years.

If the school loses eligibility, it must immediately stop awarding FSA funds and follow the closeout procedures described in *Chapter 9*.

## 90/10 Rule

Guidance on footnote disclosures can be found in the *FSA Audit Guide*, in 34 CFR 668.23(d)(4), and in appropriate accounting references.

See DCL GEN-08-12 for changes made by the *Higher Education Opportunity Act of 2008* (section 493), moving 90/10 rule to the Program Participation Agreement (from the definition of a proprietary institution of higher education).

Earlier guidance on 90/10 and institutional loans and scholarships can be found in Dear Partner Letter GEN-99-33 and Dear CPA Letters CPA-99-01 and CPA-99-02.

HEA section 487

34 CFR 668.14(b)(16)

34 CFR 668.28

## Notifying ED—90/10

A school must send notice of its failure to satisfy the 90/10 Rule to the Department by U.S. Mail or commercial overnight to the following address:

U.S. Department of Education,  
Federal Student Aid  
School Eligibility Service Group  
830 First Street, NE  
Washington, DC 20202-5403

General email: [Caseteams@ed.gov](mailto:Caseteams@ed.gov)

Contact phone numbers for the teams are provided at: <http://eligcert.ed.gov/>

## Counting revenues for the 90/10 rule

Section 668.28(a) of the Student Assistance General Provisions provides the following explanation of how to count revenue from FSA vs. non-FSA sources: See Appendix C of Subpart B of the Student Assistance General Provisions for calculation procedures.

### (3) Revenue generated from programs and activities.

The institution must consider as revenue only those funds it generates from—

- (i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in §668.8;
- (ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—
  - (A) Conducted on campus or at a facility under the institution's control;
  - (B) Performed under the supervision of a member of the institution's faculty; and
  - (C) Required to be performed by all students in a specific educational program at the institution; and
- (iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under §668.8 if the program—
  - (A) Is approved or licensed by the appropriate State agency;
  - (B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;
  - (C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;
  - (D) Provides training needed for students to maintain State licensing requirements; or
  - (E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

### (4) Application of funds.

The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

- (i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;
- (ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;
- (iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or
- (iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

### (5) Revenue generated from institutional aid.

The institution must include the following institutional aid as revenue:

- (i) For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—
  - (A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;
  - (B) Are issued at intervals related to the institution's enrollment periods;
  - (C) Are subject to regular loan repayments and collections by the institution; and
  - (D) Are separate from the enrollment contracts signed by the students.

[For rules on calculating the Net Present Value of the these loans, see 34 CFR 668.28(b) and the Appendix C to Subpart B]

- (ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.
- (iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.
- (iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

### (6) Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).

For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after other Title IV, HEA program funds are applied.



**(7) Funds excluded from revenues.**

For the fiscal year, the institution does not include—

- (i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;
- (ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;
- (iii) The amount of institutional funds used to match Title IV, HEA program funds;
- (iv) The amount of Title IV, HEA program funds refunded or returned under §668.22. If any funds from the loan disbursement used in the return calculation under §668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under §668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or
- (v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

**Other 90/10 guidance****Cash basis of accounting**

Except for institutional loans made to students under 34 CFR 668.28(a)(5)(i), a proprietary school must use the cash basis of accounting in calculating its revenue percentage under the 90/10 Rule. Under the cash basis of accounting, revenue is recognized when received rather than when it is earned.

**Revenue**

For the purpose of calculating the qualifying percentages under the 90/10 Rule, revenue is an inflow or other enhancement of assets to an entity, or a reduction of its liabilities resulting from the delivery or production of goods or services. A school may recognize revenue only when the school receives cash, i.e., when there is an inflow of cash. As a result, in order for a school to recognize revenue under the cash basis of accounting, that revenue must represent cash received from a source outside the institution.

**Tuition waivers**

Institutional grants in the form of tuition waivers do not count as revenue because no new revenue is generated. Similarly, internal transfers of cash among accounts are not considered revenue because they do not represent an inflow of cash to the institution. Institutional scholarships are not revenues generated by the school (unless they are donated by an unrelated or outside third party). An exception is permitted for schools to use donations from a related party to create restricted accounts for institutional scholarships, but only the amount earned on the restricted account and used for scholarships would count as revenue in the denominator of the calculation.

Funds held as credit balances in institutional accounts cannot be counted in the 90/10 formula. However, once funds held as credit balances are used to satisfy institutional charges, they would be counted in both the numerator and the denominator of the formula.

**Revenues from loans**

When a school makes a loan to a student, it does not receive cash from an outside source. Accordingly, cash revenue from institutional loans is recognized only when those loans are repaid, because that is when there is an inflow of cash from an outside source. Loan proceeds from institutional loans that were disbursed to students may not be counted in the denominator of the fraction, because these proceeds neither generate nor represent actual inflows of cash. The school may include only loan repayments it received during the appropriate fiscal year for previously disbursed institutional loans.

Loans made by a private lender that are in any manner guaranteed by the school are known as recourse loans. The proceeds from recourse loans may be included in the denominator of an institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution's reported revenues are also reduced by the amount of recourse loan payments made to recourse loan holders during that fiscal year. Note that recourse loan payments may be for recourse loans that were made in a prior fiscal year. Under the cash basis of accounting the reductions to total revenues in the denominator of the 90/10 calculation are reported in the fiscal year when the payments are made.

The nonrecourse portion of a partial recourse loan may be included in a 90/10 calculation. In order to include a partial recourse loan in a 90/10 calculation, the contract must identify the percentage of the sale that is nonrecourse; only that percentage may be included. Furthermore, no after-the-fact adjustments may be provided for. Revenue generated from the sale of nonrecourse institutional loans to an unrelated third party may be counted as revenue in the denominator of the 90/10 calculation to the extent that the revenues represent actual proceeds from the sale.

The sale of institutional loan receivables is distinguishable from the sale of a school's other assets because receivables from institutional loans are produced by transactions that generate tuition revenue. Tuition revenue represents income from the major service provided by a school. That would not be true in the case of the sale of other school assets.

**Counting LEAP funds**

Note that the LEAP Program is not funded beyond July 1, 2011, so the following guidance applies to LEAP grants funded before that date.

If a state agency specifies the exact amount or percentage of LEAP funds included in an individual student's state grant, only the specified amount or percentage of the student's state grant up to \$5,000 (the statutory maximum LEAP award) is considered LEAP funds.

If the state agency identifies a specific student's state grant as containing LEAP funds but does not provide an exact amount or percentage, the entire amount of the grant up to \$5,000 is considered LEAP funds. State grant funds that are not LEAP/SLEAP are included in the denominator.

If the state agency does not specify the amount of LEAP funds included in a student's individual grant but does specify the percentage of LEAP funds in the entire amount of state grant funds provided to the school and the student meets the FSA student eligibility requirements, the school must apply this percentage to the individual student's total state grant to determine the amount of the grant up to \$5,000 to be considered LEAP funds.

### Use of eZ-AUDIT required

Schools are required to submit their compliance audits, audited financial statements, and letters confirming their status as public schools through the Department's eZ-AUDIT Electronic Financial Reporting System.

This requirement applies to any compliance audits or financial statements required under 34 CFR 600.20(a) or (b) to begin or continue participating in the FSA programs, any financial statements required due to a change in ownership resulting in a change in control as provided under 34 CFR 600.20(g), any compliance audits and financial statements required annually under 34 CFR 668.23, and any compliance audits and financial statements required when a school ceases to participate in the FSA programs as provided under 34 CFR 668.26(b).

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### Information about eZ-audit

Website: <http://ezaudit.ed.gov>

E-mail contact: [fsaezaudit@ed.gov](mailto:fsaezaudit@ed.gov)

eZ-Audit Help Desk: 877-263-0780.

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### Cooperation with audit & review process

Throughout the audit process, and for other examinations such as program reviews and state reviews, the school or servicer is required to cooperate fully with its independent auditor, the Department and its Inspector General, the Comptroller General of the United States, accrediting agency, and the appropriate guaranty agency.

## AUDIT & AUDIT REVIEW PROCESS

### *Having the audit performed*

The school or servicer must make its program and fiscal records, as well as individual student records, available to the auditor. (Required recordkeeping is discussed in *Chapter 7*.) Both the financial aid and business offices should be aware of the dates the auditors will be at the school, and make sure that someone is on hand to provide requested documents and answer questions during that period.

At the end of the on-site review, the auditor conducts an exit interview. At a school, this exit interview is usually conducted with the personnel from the school's financial aid and other relevant offices. The exit interview is not only an opportunity for the auditor to suggest improvements in procedures, but it also gives the school or servicer a chance to discuss the draft report and review any discrepancies cited in the report. The exit interview is a good time to resolve any disagreements before the final report is prepared.

The final report is prepared by the auditor and submitted to the school or servicer.

### *Review of FSA audit submissions*

The Department reviews the audit report for format, completeness, and to ensure that it complies with the government's auditing standards.

We will use the general information to make an initial determination of whether the audits are materially complete and conducted in accordance with applicable accounting standards. Based on the financial data, we will also make a preliminary determination as to whether your school is financially responsible with respect to the financial responsibility ratios, or in the case of a change in ownership resulting in a change in control, whether the school satisfies the financial ratio requirements (discussed later in this chapter). Later, the Department will review submissions to determine whether the school must provide additional information or ED should take further action.

Based on the audit findings and the school's or servicer's written explanation, the Department will determine if any funds were spent improperly. Unless the school or servicer has properly appealed the decision, the school or servicer must repay any improperly spent funds within 45 days.

### *Access to records*

Once the audit is complete, the school or servicer must give the Department and the OIG access to all records and documents needed to review the audit. A school that uses a third-party servicer must give the Department and the OIG access to all records and documents needed to review a third-party servicer's compliance or financial statement audit. In addition, the school's or servicer's contract with the auditor must specify that the auditor will give the Department and the OIG access to the records and documents related to the audit, including work papers. Cooperation includes providing timely and reasonable access to records (including computer records) for examination and copying, and to personnel for the purpose of obtaining relevant information.

## eZ-Audit

The eZ-Audit website provides a paperless single point of submission for financial statements and audits (i.e., compliance reports). eZ-Audit provides automatic error checking as you enter the data and before submission. In addition, it gives you instant acknowledgment of receipt.

All schools that participate in the FSA programs must use eZ-Audit to submit financial statements and compliance audits (including copies of the A-133 reports that nonprofit and public institutions file with the Federal Audit Clearinghouse).

Nonprofit and public institutions are still required to submit their A-133 audits in writing to the Federal Clearinghouse.

## The eZ-Audit process

To access the eZ-Audit Web site you must be a registered user. Each school must select an eZ-Audit institution administrator who will be responsible for managing your school's access to the eZ-Audit website. This institution administrator will receive the user name and password necessary for your school's access and will be responsible for granting access to others you name as additional users.

Each registered user must sign and retain the eZ-Audit rules of behavior. (For registration instructions and to download the rules of behavior, please visit [ezaudit.ed.gov](http://ezaudit.ed.gov)).

Once you have obtained your school ID, you will access the appropriate page on the audit website, and—

1. enter general information about your school's compliance audit and financial statement;
2. enter specific financial data directly from its audited financial statement; and
3. attach authentic electronic copies of the audit originals.

After you have entered the required information, you must attach a copy of the audit prepared and signed by the independent auditor. The copy must be in a non-editable, portable document format (PDF) created using Adobe Acrobat version 5.0 or higher.

### Third party servicers

Guidance for audits of third-party servicers is found in the January 2000 Department of Education's "Audit Guide, Audits of Federal Student Aid Programs at Participating Institutions and Institution Servicers."

34 CFR 668.23(a)(3) and (c)

34 CFR 668.23(d)(5)

### AUDITS FOR THIRD-PARTY SERVICERS

Audit requirements also apply to third-party servicers. If a servicer contracts with several FSA schools, a single compliance audit can be performed that covers its administrative services for all schools. If a servicer contracts with only one FSA school and that school's own audit sufficiently covers the functions performed by the servicer, the servicer does not have to submit a compliance audit. A servicer must submit its compliance audit within six months after the last day of the servicer's fiscal year. The Department may require a servicer to provide a copy of its compliance audit report to guaranty agencies, lenders, state agencies, the Department of Veterans Affairs, or accrediting agencies.

In addition to submitting a compliance audit, a servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs must submit annually audited financial statements. The financial statements must be prepared on an accrual basis in accordance with GAAP and audited by an independent auditor in accordance with GAGAS and any other guidance contained in audit guides issued by the Department's Office of the Inspector General.

If the Department determines that, based on audit findings and responses, a third-party servicer owes a liability for its administration of the FSA programs, the servicer must notify each school with which it has a contract of the liability. Generally, unless they submit an appeal, schools and servicers owing liabilities must repay those liabilities within 45 days of being notified by the Department.

As noted earlier, a school may never use a third-party servicer's audit in place of its own required audit, because the school is ultimately liable for its own violations as well as those incurred by its third-party servicers. (See *Chapter 3* for more information on third-party servicers.)

## DEMONSTRATING FINANCIAL RESPONSIBILITY

In order to participate in the FSA programs, a school must demonstrate that it is financially responsible. To provide the Department with the information necessary to evaluate a school's financial responsibility, schools are required to submit financial information to the Department every year. A school must provide this financial information in the form of an audited financial statement as part of a combined submission that also includes the school's compliance audit. For-profit schools have six months from the end of the schools' fiscal year to provide the combined submission; other schools have nine months.

What follows is an overview of the financial responsibility standards. Schools should refer to Subpart L of the Student Assistance General Provisions for complete information.

The Department determines whether a school is financially responsible based on the school's ability to:

- provide the services described in its official publications and statements;
- properly administer the FSA programs in which the school participates; and
- meet all of its financial obligations.

The financial responsibility standards can be divided into two categories: (1) general standards, which are the basic standards used to evaluate a school's financial health, and (2) performance and affiliation standards, which are standards used to evaluate a school's past performance and to evaluate individuals affiliated with the school.

### ***Financial responsibility for public schools***

A public school is financially responsible if its debts and liabilities are backed by the full faith and credit of the state or another government entity. The Department considers a public school to have that backing if the school notifies the Department that it is designated as a public school by the state, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation. The school must also provide the Department with a letter from an official of the appropriate government entity confirming the school's status as a public school. A letter from a government entity may include a confirmation of public school status for more than one school under that government's purview. The letter is a onetime submission and should be submitted as a separate document.

Public schools also must meet the past performance and affiliation standards discussed later, and must submit financial statements prepared in accordance with generally accepted accounting principles (GAAP) and prepared on the accrual basis.

### ***Financial responsibility for proprietary or private nonprofit schools***

A proprietary or private nonprofit school is financially responsible if the Department determines that—

## Financial responsibility

Sec. 498(c) of the Higher Education Act  
34 CFR 668 Subpart L

## Change in ownership

When a change in ownership occurs, the Department applies the standards in 34 CFR 668.15.

## Return of Title IV funds

The requirements for return of Title IV funds for students who withdraw from the educational program are described in *Volume 5*.

- the school has a composite score of at least 1.5;
- the school has sufficient cash reserves to make the required refunds, including the return of Title IV funds (these requirements are known as the refund reserve standards);
- the school is meeting all of its financial obligations, including making required refunds, including the return of Title IV funds and making repayments to cover FSA program debts and liabilities; and
- the school is current in its debt payments.

These requirements are discussed in more detail in the next section.

## Financial responsibility

Treatment of long-term debt

DCL GEN 03-08, July 2003

34 CFR 668, Subpart L, Appendices A & B  
Ratios

34 CFR 668.171(b)(3)

Refund reserve standard

34 CFR 668.173

Returning funds

34 CFR 668.172(c)

For withdrawn students, returns funds in a  
timely manner

34 CFR 668.22

Even if a school meets all of the general requirements, the Department does not consider the school to be financially responsible if—

- in the school's audited financial statement the opinion expressed by the auditor was adverse, qualified, or disclaimed, or the auditor expressed doubt about the continued existence of the school as a going concern (unless the Department determines that a qualified or disclaimed opinion does not have a significant bearing on the school's financial condition), or
- the school violated one of the past performance requirements discussed later in this chapter.

## STANDARDS FOR FINANCIAL RESPONSIBILITY

### Composite score

The composite score standard combines different measures of fundamental elements of financial health to yield a single measure of a school's overall financial health. This method allows financial strength in one area to make up for financial weakness in another area. In addition, this method provides an equitable measure of the financial health of schools of different sizes.

The composite score methodology takes into account the differences between proprietary schools and private nonprofit schools. The variance takes into account the accounting differences between these sectors of postsecondary schools. However, the basic steps used to arrive at the composite score are the same. These steps are described later in this section.

### Refund reserve standards

One of the standards that a school must satisfy in order to be considered financially responsible is that it must have sufficient cash reserves to return FSA funds when a student withdraws. A school is considered to have sufficient cash reserves if it:

- is located in a state that has an ED-approved tuition recovery fund and the school contributes to that fund, or
- for its two most recently completed fiscal years, the school made all required returns in a timely manner (see *Volume 5, Chapter 2* for more information on returns, including timely payment).

## Additional information on composite scores

For complete information on the calculation of the composite score, schools should refer to Appendices A and B of Subpart L in the General Provisions regulations.

The Department issued guidance on the treatment of long-term and other debt in calculating these ratios in DCL GEN-01-02, which was subsequently replaced by DCL GEN-03-08.

## Tuition Recovery Funds

When a state submits a tuition recovery fund for approval by the Department, the Department will consider the extent to which the recovery fund:

- provides returns to both in-state and out-of-state students;
- complies with FSA requirements for the order of return of funds to sources of assistance; and
- is replenished if any claims arise that deplete the fund.



***Returning funds in a timely manner***

Unearned funds must be returned no later than 45 days after the date of the school's determination that the student withdrew. ED considers the school to have returned funds, depending upon the method it uses to return them. Specifically, the regulations provide that a school has returned funds when it has:

- deposited or transferred the funds into the bank account it maintains for federal funds (see sidebar) no later than 45 days after the date it determines that the student withdrew,
- initiated an electronic funds transfer (EFT) no later than 45 days after the date it determines that the student withdrew, or
- issued a check no later than 45 days (as supported by the school's records) after the date it determines that the student withdrew.

If a check is used to return unearned funds, the Department requires that the check be endorsed by ED no later than 60 days after the school's determination that a student withdrew in order to be considered a timely return.

***Compliance thresholds for timely return of funds***

The Department provides for a small margin of error in determining that a school has paid all required refunds and returns on time. The Department considers a school to have paid returns in a timely manner if—

- there is less than a 5% error rate in a sample of returns (composed of students for whom the school was required to return unearned funds) examined in a compliance audit, an audit conducted by the Office of the Inspector General (OIG), or a program review conducted by the Department or guaranty agency, or
- there are no more than two late returns in the sample (regardless of the number or percentage of late returns in the sample).

In addition, if the reviewer or auditor finds a material weakness or reportable condition in the school's report on internal controls relating to the return of unearned Title IV aid, the Department considers the school to have not paid returns in a timely manner.

***Letter of credit required when funds are not returned in timely manner***

Public schools and schools covered by a state tuition recovery fund that has been approved by the Department are not subject to the letter of credit requirements. If any other school exceeds the compliance thresholds in either of its two most recently completed fiscal years, the school must submit an irrevocable letter of credit acceptable and payable to the Department. The letter of credit must be equal to 25% of the returns the school made or should have made during its most recently completed fiscal year.

A school that is required to submit a letter of credit must do so no later than 30 days after the earlier of the date that:

***Deposit to operating account or separate federal bank account***

A school that maintains a separate federal bank account must deposit to that account, or transfer from its operating account to its federal account, the amount of unearned program funds, as determined under the Return of Title IV funds regulations. The date the school makes that deposit or transfer is the date used to determine whether the school returned the funds within the 45-day timeframe permitted in the regulations.

Unless the Department requires a school to use a separate account, the school may use its operating account for FSA purposes. In this case, the school must designate that account as its federal bank account, and have an auditable system of records showing that the funds have been allocated properly and returned in a timely manner. If there is no clear audit trail, the Department can require the school to begin maintaining FSA funds in a separate bank account.

34 CFR 668.163(a)

***Making new awards with returned funds***

After a school has returned unearned funds to its federal account, provided those funds were originally received from the Department or from an FFEL lender under a process that allows the school to reuse the unearned funds, the school can use the funds to make disbursements to other eligible students.

***Address for Letters of Credit***

Letters of credit are submitted to:

Director  
Performance Improvement & Procedures  
U.S. Department of Education  
Federal Student Aid  
830 First Street, NE  
UCP-3, MS 5435  
Washington, DC 20002-8019

- the school is required to submit its compliance audit;
- the OIG issues a final audit report;
- the designated department official issues a final program review determination;
- the Department issues a preliminary program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the school did not return unearned funds for more than 10% of the sampled students; or
- ED sends a written notice to the school requesting the letter of credit that explains why the school has failed to return unearned funds in a timely manner.

If the finding in the preliminary report is that the school did not return unearned funds in a timely manner for 10% or fewer of the sampled students, a school would generally be required to submit the letter of credit only if the final report shows that the school did not return unearned funds in a timely manner for 5% or more of all the students in the sample. If the final report indicates that a letter of credit is required, the school would have to submit it no later than 30 days after the final report is issued.

### ***Exceptions to the letter of credit requirement***

A school is not required to submit a letter of credit of less than \$5,000. However, to meet the reserve requirement, such a school would need to demonstrate that it has available at all times cash reserves of at least \$5,000 to make required returns.

In addition, a school may delay submitting a letter of credit while it asks for reconsideration of a finding that it failed to return unearned FSA funds in a timely manner. A school may request that the Department reconsider its finding if the school submits documents showing that:

- the unearned FSA funds were not returned in a timely manner solely because of exceptional circumstances beyond the school's control and that the school would not have exceeded the applicable threshold had it not been for the exceptional circumstances; or
- it did not fail to make timely returns.

A school that submits an appeal, together with all required supporting documents, by the date the letter of credit would be due is not required to submit a letter of credit unless the Department notifies the school that its request has been denied.

### ***Current in debt payments***

A school is not current in its debt payments if

- it is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion, or
- fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations.

## Calculating a composite score

The first step in calculating a school's composite score is to determine the school's primary reserve, equity, and net income ratios by using information from the school's audited financial statement. These ratios take into account the total financial resources of the school. The Primary Reserve Ratio represents a measure of a school's viability and liquidity. The Equity Ratio represents a measure of a school's capital resources and its ability to borrow. The Net Income Ratio represents a measure of a school's profitability.

Upon review, some items from a school's audited financial statement may be excluded from the calculation of the ratios. For example, the Department may exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs, from the ratio calculations. (See box below for regulatory list of exclusions.)

All long-term debt obtained for the school's purposes may be included for purposes of the Primary Reserve Ratio calculation. However, it is important to note that the overall level of debt obtained for long-term purposes that can be included in the numerator of the Primary Reserve Ratio is limited under the regulations. It cannot exceed the amount of the school's net property, plant, and equipment.

A strength factor score is then calculated for each ratio using equations established by the Department. A strength factor score reflects a school's relative strength or weakness in a fundamental element

of financial health, as measured by the ratios. Specifically, the strength factor scores reflect the extent to which a school has the financial resources to: 1) replace existing technology with newer technology; 2) replace physical capital that wears out over time; 3) recruit, retain, and retrain faculty and staff (human capital); and 4) develop new programs.

A weighting percentage is applied to each strength factor score to obtain a weighted score for each ratio. The weighting percentages reflect the relative importance that each fundamental element has for a school in a particular sector (proprietary or private nonprofit).

The sum of the weighted scores equals the school's composite score. Because the weighted scores reflect the strengths and weaknesses represented by the ratios and take into account the importance of those strengths and weaknesses, a strength in the weighted score of one ratio may compensate for a weakness in the weighted score of another ratio.

Once a composite score is calculated, it is measured along a common scale from negative 1.0 to positive 3.0 as indicated in the diagram on the next page. This scale reflects the probability a school will be able to continue operations and meet its obligations to students and the Department.

## Exclusions

Excluded items. In calculating an institution's ratios, the Secretary—

- (1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;
- (2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;
- (3) Excludes all unsecured or uncollateralized related-party receivables;
- (4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

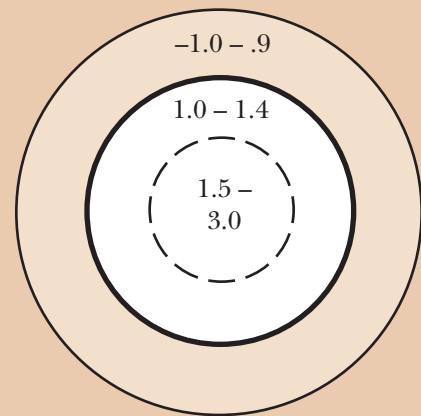
(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if—

- (i) In the notes to the institution's audited financial statement, or as a separate attestation, the auditor discloses by name and CFDA number, the amount of HEA program funds reported as expenses in the Statement of Activities for the fiscal year covered by that audit or attestation; and
- (ii) The institution's composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the ratio calculations.

34 CFR 172(c)

## Composite score scale

- 1.5 to 3.0** Financially responsible without further oversight.
- 1.0 to 1.4** In the “Zone.” The school is considered financially responsible, but additional oversight is required.
- 1.0 to .9** Not financially responsible. The school must submit a letter of credit of at least 50% of its FSA funding. The school may be permitted to participate under provisional certification with a smaller letter of credit—with a minimum of 10% of its FSA funding, and additional oversight.



## Example: Calculation of a composite score for a proprietary institution\*

### Calculation of Ratios

$$\text{Primary Reserve Ratio} = \frac{\text{Adjusted equity}}{\text{Total expenses}} = \frac{\$760,000}{\$9,500,000} = 0.080$$

$$\text{Equity Ratio} = \frac{\text{Modified equity}}{\text{Modified expenses}} = \frac{\$810,000}{\$2,440,000} = 0.332$$

$$\text{Net Income Ratio} = \frac{\text{Income before taxes}}{\text{Total revenues}} = \frac{\$510,000}{\$10,010,000} = 0.051$$

### Calculation of Strength Factor Score

$$\begin{aligned} \text{Primary Reserve Strength Factor Score} &= 20 \times \text{Primary Reserve Ratio} \\ 20 \times 0.080 &= 1.600 \end{aligned}$$

$$\begin{aligned} \text{Equity Strength Factor Score} &= 6 \times \text{Equity Ratio} \\ 6 \times 0.332 &= 1.992 \end{aligned}$$

$$\begin{aligned} \text{Net Income Strength Factor Score} &= 1 + (33.3 \times \text{Net Income Ratio}) \\ 1 + (33.3 \times 0.051) &= 2.698 \end{aligned}$$

### Calculation of Weighted Score

$$\begin{aligned} \text{Primary Reserve Weighted Score} &= 30\% \times \text{Primary Reserve Strength Factor Score} \\ 0.30 \times 1.600 &= 0.480 \end{aligned}$$

$$\begin{aligned} \text{Equity Weighted Score} &= 40\% \times \text{Equity Strength Factor Score} \\ 0.40 \times 1.992 &= 0.797 \end{aligned}$$

$$\begin{aligned} \text{Net Income Weighted Score} &= 30\% \times \text{Net Income Strength Factor Score} \\ 0.30 \times 2.698 &= 0.809 \end{aligned}$$

### Composite Score

$$\text{Sum of All Weighted Scores} \quad 0.480 + 0.797 + 0.809 = 2.086 \quad \text{rounded to 2.1}$$

\* The definition of terms used in the ratios and the applicable strength factor algorithms and weighting percentages are found in the Student Assistance General Provisions (regulations) (34 CFR 668) Subpart L, Appendix A for proprietary schools and Appendix B, for private nonprofit schools.

## ALTERNATIVES TO THE GENERAL FINANCIAL STANDARDS

If a school does not meet the general standards for financial responsibility, the Department may still consider the school to be financially responsible or may allow the school to participate under provisional certification if the school qualifies for an alternative standard.

If the Department determines that a school that does not meet one or more of the general standards and does not qualify for an alternative, the Department may initiate a limitation, suspension, or termination action against the school (see *Chapter 9* for more information on corrective actions and sanctions).

### ***Letter of credit alternative for new school***

A new school (a school that seeks to participate in the FSA programs for the first time) that does not meet the composite score standard (i.e., has a composite score of less than 1.5) but meets all other standards may demonstrate financial responsibility by submitting an irrevocable letter of credit to the Department. The letter of credit must be acceptable and payable to the Department and equal to at least 50% of the FSA program funds that the Department determines that the school will receive during its initial year of participation.

### ***Letter of credit alternative for participating school***

A participating proprietary or private nonprofit school that fails to meet one or more of the general standards or is not financially responsible because it has an adverse audit opinion may demonstrate financial responsibility by submitting an irrevocable letter of credit to the Department. The letter of credit must be acceptable and payable to the Department and equal to at least 50% of the FSA program funds that the school has received during its most recently completed fiscal year. The school is then considered to be financially responsible.

### ***Zone alternative***

A participating school that fails to meet the composite score standard (i.e., has a composite score of less than 1.5) but meets all other standards may demonstrate financial responsibility for up to three consecutive fiscal years if the Department determines that the school's composite score is equal to 1.0 to 1.4 for each of those years and the school meets specific monitoring requirements.

This alternative gives a school the opportunity to improve its financial condition over time without requiring the school to post a letter of credit or participate under provisional certification. Under the zone alternative, a school's operations, including its administration of the FSA programs, are monitored more closely. If a school does not score at least 1.0 in one of the three subsequent fiscal years or does not improve its financial condition to attain a composite score of at least 1.5 by the end of the three-year period, the school must satisfy another alternative standard to continue participating. In addition, if a school fails to comply with the information reporting or payment method requirements, the Department may determine that the school no longer qualifies under this alternative.

## **Alternative standards and requirements**

34 CFR 668.175

### **Information to be provided under the zone alternative**

The school must provide timely information regarding any of the following oversight and financial events:

- Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;
- Any event that causes the institution, or related entity as defined in the *Statement of Financial Accounting Standards (SFAS) 57*, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;
- Any violation by the institution of any loan agreement;
- Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;
- Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or
- Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

The school may also be required to:

- submit its financial statement and compliance audits earlier than the time specified under 34 CFR 668.23(a)(4); and
- provide information about its current operations and future plans.

34 CFR 668.175(d)(2)

Under the zone alternative, a school—

- must request and receive funds under the cash monitoring or reimbursement payment methods, as specified by the Department (see *Volume 4, Chapter 2*);
- must provide timely information regarding certain oversight and financial events (see sidebar);
- may be required to submit its financial statement and compliance audit earlier than normally required (see the discussion of audit submission deadlines earlier in this chapter); and
- may be required to provide information about its current operations and future plans.

The school must also require its auditor to express an opinion, as part of the school's compliance audit, on the school's compliance with the requirements of the zone alternative, including the school's administration of the payment method under which the school received and disbursed FSA program funds.

### ***Provisional certification for school not meeting standards***

If a participating proprietary or private nonprofit school fails to meet one or more of the general standards or is not financially responsible because it has an unacceptable audit opinion, the Department may permit the school to participate under provisional certification for up to three years.

The Department may permit a school that is not financially responsible to participate under provisional certification if the school is not financially responsible because it:

- does not satisfy the general standards;
- has an unacceptable audit opinion; or
- has a past performance problem that has been resolved.

If the Department permits a school to participate under provisional certification, the Department will require the school:

- to submit to the Department a letter of credit, payable and acceptable to the Department, for a percentage (10%–100%) of the FSA program funds received by the school during its most recent fiscal year.
- to demonstrate that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years.

Moreover, the school must comply with the requirement under the zone alternative that it provide timely information regarding certain oversight and financial events. Finally, a school that is required to post a letter of credit will be placed on heightened cash monitoring or reimbursement.

If a school is still not financially responsible at the end of a period of provisional certification, the Department may again permit provisional certification. However, the Department may require the school or persons or



entities that exercise substantial control over the school to submit financial guarantees to the Department to satisfy any potential liabilities arising from the school's FSA program participation. The same persons may be required to agree to be jointly and severally liable for any FSA program liabilities.

The Department is not required to offer provisional certification to a school. It is an alternative that the Department may choose to offer in exceptional circumstances.

***Provisional certification for school where persons or entities owe liabilities***

If a school is not financially responsible because the persons or entities that exercise substantial control over the school owe an FSA program liability, the Department may permit the school to participate under provisional certification if:

- the persons or entities that owe the liability repay or enter into an agreement with the Department to repay the liability (or the school assumes the liability and repays or enters into an agreement to repay the liability);
- the school meets all the general standards of financial responsibility and demonstrates that it has met all of its financial obligations and was current on its debt payments for its two most recent fiscal years; and
- the school submits to the Department a letter of credit, payable and acceptable to the Department, for an amount determined by the Department (at least 10% of the FSA program funds received by the school during its most recent fiscal year).

The school also must comply with the requirements under the zone alternative.

In addition, the Department may require the school or persons or entities that exercise substantial control over the school to submit financial guarantees to the Department to satisfy any potential liabilities arising from the school's FSA program participation. The same persons may be required to agree to be jointly and severally liable for any FSA program liabilities.

### **Notifying the Department of change of control**

A school must report any changes of control under which a person acquires the ability to affect substantially the actions of the school. Such changes in control trigger a review to determine if the school is financially responsible (see *Chapter 5*).

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### **Fidelity bond coverage for employees**

In the past, schools were required to maintain fidelity bond coverage for their employees. This is no longer a federal requirement for schools that participate in the FSA programs. However, by state law some schools are still required to maintain fidelity bond coverage. Even if a school is not required to do so, it may choose to maintain fidelity bond coverage to protect itself when losses occur because of a lack of integrity, on the part of the school's employees or officers.

## **PAST PERFORMANCE & AFFILIATION STANDARDS**

In addition to meeting the numeric standards of financial responsibility and fulfilling all its financial obligations, a school must demonstrate that it properly administers the FSA programs in which it participates. Past actions of the school or individuals affiliated with the school may reveal mismanagement of FSA program funds, thereby demonstrating that a school is not financially responsible. Therefore, in evaluating the way a school administers the FSA programs, the Department considers the past performance of both the school and individuals affiliated with the school.

### ***Past performance of a school***

A school is not financially responsible if it—

- in the last five years, has been subject to a limitation, suspension, or termination action or has entered into an agreement to resolve a limitation, suspension, or termination action initiated by the Department or a guaranty agency;
- in either of its two most recent FSA program reviews or audits, has had findings for the current fiscal year or two preceding fiscal years that required repayment of more than 5% of the FSA program funds received by the school;
- has been cited during the last five years for failing to submit audits as required; or
- has failed to satisfactorily resolve any compliance issues identified in program reviews or audit reports, upheld in a final decision of the Department.

### ***Past performance of persons affiliated with a school***

A school is not financially responsible if any person who exercises substantial control over the school (or any members of the person's family alone or together) owes a liability for an FSA program violation or has ever exercised substantial control over another school (or a third-party servicer) that owes a liability for an FSA program violation, unless that person, family member, school, or servicer demonstrates that the liability is being repaid in accordance with an agreement with the Department.

The Department may consider a school that does not meet this requirement to be financially responsible if the school:

- notifies the Department that the individual repaid to the Department an acceptable portion of the liability, in accordance with the regulations;
- notifies the Department that the liability is currently being repaid in accordance with a written agreement with the Department; or
- demonstrates to the satisfaction of the Department: (1) why the person who exercises substantial control should nevertheless be considered to lack that control, or (2) why the person who exercises substantial control and each member of that person's family does not or did not exercise substantial control over the school or servicer that owes the liability.

## LIMITATIONS

An otherwise eligible institution becomes an ineligible institution if the school exceeds

- the 50% limit on students without a high school diploma or equivalent,
- the incarcerated student limitation (25%), or
- the correspondence course limitation (50%) or the correspondence student limitation (50%).

A school must calculate these percentages to demonstrate compliance with a requirement or to demonstrate eligibility for a limitation waiver. For each of the tests enumerated above, the calculation performed by the school must be attested to by the independent auditor who prepares the school's audited financial statement or its FSA compliance audit. If a school's initial or previous calculation was in error, the auditor's report must be part of the audit workpapers and must include a recalculation. The auditor's attestation report must indicate whether the school's determinations (including any relevant waiver or exception) are accurate.

For each of the limitation requirements, the school must notify the Department (via Section G of the E-App) of the school's failure to meet a requirement, its falling within a prohibited limitation, or its ineligibility for a continued waiver, as applicable. The school's notification must occur by July 31 following the end of an award year. A school that fails to meet any of these requirements loses its eligibility to participate in any FSA program as of the last day of the most recent award year for which the school failed to meet the requirement.

If a school loses its eligibility because it failed to meet one or more of the limitation requirements, the school cannot regain eligibility until it can demonstrate that it was in compliance with all of the limitation requirements for the most recently completed award year. Once this has occurred the school may apply to regain its eligibility. In addition, it must also show how its administrative practices and policies have been changed to ensure that it will not fall within prohibited limits in the future.

### ***Limitation on students admitted without HS diploma or equivalent***

A school that does not provide a 4-year bachelor's degree program, or a 2-year associate degree program is ineligible if, for its latest complete award year, more than 50% of its regular enrolled students had neither a high school diploma nor its equivalent.

If a public or private nonprofit institution exceeds the 50% limit because it serves significant numbers of these students through contracts with federal, state, or local government agencies, the Department may waive the limitation.

The waiver will only be granted if no more than 40% of the public or private nonprofit regular students not served through contracts with federal, state, or local government agencies to provide job training do not have a high school diploma or its equivalent. If granted, the waiver may be extended

## Conditions of institutional ineligibility

34 CFR 600.7

In addition to the limitations discussed in this chapter, a school is not eligible if it (or its owner) files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving FSA program funds. See chapters 1 and 3.

A school that becomes ineligible because of one of these factors must immediately stop awarding FSA funds and must follow the requirements for a school that has lost its FSA participation (see *Chapter 9*).

## Incarcerated student definition

A student who is serving a criminal sentence in a federal, state, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution (this does not include detention in a halfway house, home detention, or weekend-only sentences).

## Waiver of incarcerated student limitation

→ For a public or private nonprofit school offering only two-year or four-year programs that lead to associate or bachelor's degrees, the waiver applies to all programs offered at the school.

→ However, if the public or private nonprofit school offers other types of programs, the waiver would apply to any of the school's two-year associate degree programs or four-year bachelor's degree programs, and also to any other programs in which the incarcerated regular students enrolled have a 50% or greater completion rate. (The calculation of this completion rate is specified in 34 CFR 600.7(e)(2) of the Institutional Eligibility regulations and must be attested to by an independent auditor.)

→ A nonprofit school may request the waiver using the E-App (<http://www.eligcert.ed.gov>), by answering the questions in "Section G" and explaining in "question 69."

## Limitations on incarcerated students & correspondence study

Incarcerated students

34 CFR 600.7(a)(1)(iii) and 600.7(c)

Correspondence study

Sec. 481(a)(3)(A) and (B) of the HEA

34 CFR 600.7(a)(1)(i) and (ii)

## Correspondence student eligibility

For information about a student's eligibility for FSA funds while enrolled in a correspondence course and cost of attendance information for correspondence courses, see *Volume 1, Chapter 1* and *Volume 3, Chapter 2*.

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## A school is the sum only of its eligible programs

Some postsecondary institutions offer programs that are eligible for FSA as well as programs that are not FSA-eligible. For FSA program purposes, we consider an eligible institution is the sum of its "eligible programs."

In order to minimize the effect on its institutional eligibility of offering programs solely by correspondence that do not lead to a degree, a school might choose to identify those programs as not part of its FSA-eligible programs.

A program (and students enrolled therein) that was so identified would not be considered part of the school in these two formulas.

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## Notifying ED when limit is exceeded

34 CFR 600.7(h)

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted Electronic Application (E-App) (which deal with enrollment thresholds in these areas), the school must notify the Department via the E-App (see *Chapter 5*).

The Department will advise the school of its options, including whether the school might be eligible for a waiver. (Waivers are available for the correspondence student limitation, the incarcerated student limitation, and the limitation on students without a high school diploma or equivalent.)

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## Carl D. Perkins Career and Technical Education Act of 2006

20 U.S.C. 2301

in each year the public or private nonprofit school continues to meet the requirements. The public or private nonprofit school's calculation must be attested to by an independent auditor.

## Incarcerated student limitation

A school is ineligible if, in its latest complete award year, more than 25% of its regular students are incarcerated. A public or private nonprofit school can ask the Department to waive this limitation (see sidebar for details). If granted, the waiver is effective as long as the public or private nonprofit school continues to meet the waiver requirements each award year. For information on the eligibility of incarcerated students for FSA assistance, see *Volume 1, Chapter 1*.

## Correspondence course & correspondence student limitation

In general, a school is ineligible if, for the latest complete award year—

- more than 50% of the school's courses were correspondence courses (correspondence course limitation).  
Note: This limitation does not apply to a school that mainly provides vocational adult education or job training (as defined under Sec. 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act).
- 50% or more of the school's regular enrolled students were enrolled in correspondence courses (correspondence student limitation).

This limitation may be waived for a school that offers a 2-year associate degree or 4-year baccalaureate degree program if the school demonstrates to the Department that in that award year, the students enrolled in its correspondence courses receive no more than 5% of the total FSA program funds received by all of the school's students in the award year.

Note that the 50% limits apply to the school, not to its individual programs. An educational program composed entirely of correspondence courses could still be an eligible program if no more than 50% of the school's courses were offered through correspondence, and the program met other eligibility requirements.

This limitation may be waived for a 2-year associate or 4-year baccalaureate degree program if the school can demonstrate to the Department that students enrolled in correspondence courses received no more than 5% of the total FSA program funds awarded to its students in the award year. Also note that the limitations on correspondence courses and correspondence students do not apply to a school that mainly provides vocational adult education or job training (as defined under section 3(3C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995).

The school's correspondence course calculation and correspondence student calculation must be attested to by an independent auditor.

For additional information on correspondence study in the context of program eligibility, see *Chapter 2*.

## Calculating the percentage of correspondence courses

- If a school offers a course both by correspondence and residential training, the course counts twice, as a correspondence course and as a residential course. Thus, it would count as one in the numerator and as two in the denominator.
- Regardless of how many sections of a course or program are offered during the award year (as a residential or as a correspondence course), the course is counted only once under each type.
- A program not offered in courses or modules counts as one correspondence course.

Using the latest complete award year, the formula for determining the percentage of correspondence courses is as follows:

$$\frac{\text{number of school's correspondence courses}}{\text{total number of school's courses}} = \% \text{ of correspondence courses}$$

## Calculating the percentage of correspondence students

- All enrolled regular students must be counted. (A regular student is “a person enrolled for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by the school.”)
- A school must use a straight head count of enrolled students, including full-time and part-time students and students who don’t receive aid as well as FSA recipients.
- If a student withdrew from the school and received a full refund the student is not counted.

Using the latest complete award year, the formula for determining the percentage of enrolled students is as follows:

$$\frac{\text{number of regular students enrolled in the school's correspondence courses}}{\text{number of regular students enrolled in all of the school's courses}} = \% \text{ of correspondence students}$$



## The eCDR Process

ED sends the draft and official cohort default rates electronically to all schools participating in the FSA Programs. You must enroll in the eCDR process to receive your rates.

If your school is not enrolled, go to

[www.fsawebenroll.ed.gov](http://www.fsawebenroll.ed.gov)

On that page choose “Enroll” and then select the radio button for “Modify Existing Services for a Destination Point.”

## Default rates on the Web

Searchable default rates for all schools participating in the FSA programs are posted on the Web at

[www.ed.gov/FSA/defaultmanagement](http://www.ed.gov/FSA/defaultmanagement)

The Department also publishes *Budget Lifetime Default Rates* and *Cumulative Lifetime Default Rates* for the FFEL and Direct Loan Programs. These rates, which include additional defaults in years after the close of the CDR “default window,” do not affect a school’s eligibility.

## Default rates and suspension

34 CFR Part 668

- Calculation of rates

Subpart M Two-Year Cohort Default Rates

Subpart N Cohort Default Rates

- Consequences of default rates

34 CFR 668.16(m)

CDR calculation and sanctions in the law

HEA: Sec. 435(m)

20 U.S.C. 1082, 1085, 1094, 1099c

## Cohort Default Rate Guide

For more technical information on default rates and procedures for challenges, adjustments, and appeals, please refer to the *Cohort Default Rate Guide*.

[ifap.ed.gov/DefaultManagement/finalcdrg.html](http://ifap.ed.gov/DefaultManagement/finalcdrg.html)

## School Participation Team contacts

You can locate the School Participation Team for your region by going to the “Help” menu on the IFAP website and choosing *Contact Information > Federal Student Aid Offices*.

## COHORT DEFAULT RATES

A school’s eligibility for the FSA programs can be affected by a high cohort default rate (CDR). The Department calculates a school’s CDR based on information from the loan holders, including private lenders (for FFEL), schools (for Perkins), and the Direct Loan servicers.

The Department sends draft default rates to participating schools in February to allow each school an opportunity to review and correct the data that will be used to calculate its official cohort default rates. In September of each year, the Department issues the official cohort default rates. These rates are electronically delivered to schools and posted on the Web. Your school must be enrolled in the eCDR process for electronic delivery of the rates (see sidebar note for instructions and appeal procedures).

### Time-frames for cohort default rates

A school’s annual CDR is based on a “cohort” of students who received FFEL or Direct Loans at your school and entered repayment in a single fiscal year. The fiscal year that is used is the federal fiscal year (October 1–September 30).

For instance, your school’s FY 2009 CDR is based on the cohort of students who received FFEL or Direct Loans at your school and entered repayment on those loans between October 1, 2008 and September 30, 2009. This number becomes the denominator (the lower part of the fraction) in the CDR calculation.

X

**Total borrowers who enter repayment during FY2009**

The Department tracks this group of students during the fiscal year in which they enter repayment, and through the end of the following fiscal year. The sum of students who default on their loans (or meet other related conditions) during those two fiscal years become the numerator (top part of the fraction) in the CDR calculation.

**Total borrowers who entered repayment in FY2009 who defaulted in  
FY2009 and 2010**

**Total borrowers who entered repayment during FY2009**

Because it takes two years to track the outcomes, the initial FY 2009 CDR for your school is not released until two years later, at the beginning of 2011. This is one of the reasons that your school should closely monitor student borrowing and implement effective default prevention procedures as soon as possible. The steps you take to help your students this year may reduce the number of defaults in your school’s CDR two years down the road.

The terminology, criteria, calculations, and exceptions for the rates are described in more detail in the *Cohort Default Rate Guide*.

### Change to 3-year time-frame for FY2009 cohort default rates

Beginning with the cohort of students who enter repayment in FY 2009 (October 1, 2008–September 30, 2009), the default calculation for schools will be based on defaults that occur during a 3-year period (rather than 2 years).



Thus, the CDR for FY2009 will count those students in the FY2009 cohort who default in FY 2009, 2010, and 2011.

No sanctions will be applied to schools based on the new rates until three annual rates have been calculated. During this transition period, sanctions will be based on the 2-year cohort default rate that we described in the previous section. Thus, the Department will calculate both a 2-year and a 3-year CDR rate for each school for FY 2009, 2010, and 2011. Sanctions based on the new 3-year rates will be applied for the FY 2011 rates, to be released in September 2014.

### ***Effect of cohort default rates***

Currently, a school is not considered to be administratively capable when—

- the cohort default rate for Perkins loans made to students for attendance at the school exceeds 15% (see *Volume 6* for details), or
- the cohort default rate for Federal Stafford/SLS loans or for Direct Subsidized/Unsubsidized Loans made to students for attendance at the school equals or exceeds 25% for the three most recent fiscal years, or if the most recent cohort default rate is greater than 40%.

When a high default rate demonstrates a lack of administrative capability, the Department may choose to provisionally certify such a school.

In addition to affecting a school's administrative capability and limiting the school's participation in the FSA programs, a high default rate may make a school ineligible to participate in the Direct Loan, Pell Grant, or Perkins programs. For detailed information on default requirements refer to the *Cohort Default Rate Guide* (posted on IFAP—see sidebar).

### ***Default prevention & management plan***

If your school's cohort default rate is equal to or greater than 30%, it must establish a default prevention task force that prepares a plan that—

- identifies the factors causing your cohort default rate to exceed the threshold,
- establishes measurable objectives and the steps your school will take to improve your cohort default rate, and
- specifies the actions your school will take to improve student loan repayment, including counseling students on repayment options.

You must submit your default prevention plan to your School Participation Team for review (see sidebar for contact). If your cohort default rate is equal to or greater than 30% for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review.

### **Contacting the default office**

The Operations Performance Division in Federal Student Aid responds to questions about FFEL/DL cohort default rates, and reviews FFEL/DL cohort default rate challenges, adjustments, and appeals. It also provides technical assistance and outreach to schools to assist them in lowering their default rates.

Web: [ifap.ed.gov/DefaultManagement](http://ifap.ed.gov/DefaultManagement)

Hotline: 202-377-4259

FAX: 202-275-0913

E-MAIL: [fsa.schools.default.management@ed.gov](mailto:fsa.schools.default.management@ed.gov)

### **Default prevention & management plan**

34 CFR 668.217

### **Default prevention & management plan for new schools**

New schools are required to implement a default prevention and management plan prior to certification. In addition, a school that undergoes a change in ownership that results in a change in control or a school that changes its status as a main campus, branch campus, or additional location must also implement a default management plan.

Schools applying to participate are exempt from submitting a default plan if—

- the school, including its main campus and any branch campus, does not have a cohort default rate greater than 10%, and
- the new owner of the school does not own and has not owned any other school that had a cohort default rate greater than 10% during the owner's tenure.

### **Sample Default Plan**

A "Sample Default Prevention and Management Plan" was issued as an attachment to GEN-05-14. The sample plan is also posted in the collection of "Default Rate Materials" on the IFAP website.



# Updating Application Information

*This chapter describes the regular recertification of schools, as well as changes that can affect a school's participation and how and when to report these changes to the Department on the E-App.*

## RECERTIFICATION

A school may be certified to participate for up to six years. Recertification is the process through which a school that is presently certified to participate in the FSA programs applies to have its participation extended beyond the expiration date of its current **Program Participation Agreement (PPA)**. The Department will notify a school six months prior to the expiration of the school's PPA. The school must submit a materially complete application before the expiration date listed in its PPA.

If a school that is currently certified submits its materially complete application to the Department no later than 90 calendar days before its PPA expires, its PPA remains valid, and its eligibility to participate in the FSA programs continues until its application is either approved or not approved. This is true even if the Department does not complete its evaluation of the application before the PPA's expiration date. (For example, if a school's PPA expires on June 30 and it submits its application by March 31, the school remains certified during the Department's review period—even if the review period extends beyond June 30.) If the 90th day before the PPA's expiration falls on a weekend or a federal holiday and the school submits its Application (E-App) no later than the next business day, the Department considers the application to be submitted 90 days before the PPA expires.

If the school's application is not received at least 90 days before the PPA expires or is not materially complete, the school's PPA will expire on the scheduled expiration date and the FSA program funding will cease. If a school's eligibility lapses, the school may not continue to disburse FSA funds until it receives the Department's notification that the school is again eligible to participate in the programs.

Following submission of an application, the School Participation Team will contact the school if it has questions about the application. Generally, this will be within 90 days of the Department receiving an application. If a school's application has been approved, the Department will send an electronic notice to the president and financial aid officer notifying them that the school's PPA is available to print, review, sign, and return. If the school's application is not approved, ED will notify the school and explain why.

## CHAPTER 5 HIGHLIGHTS

- Recertification
- Change in ownership
- Changes in ownership interest & 25% threshold
- Steps to be taken during a change in ownership
- Temporary approval for continued participation
- Reporting substantive changes
- Changes to location, branch, or campus
- Adding programs
- Changes in accreditation
- Changes to 3rd-party servicers

## FSA Assessment modules

To assess your compliance with the provisions of this chapter see "Recertification," at [ifap.ed.gov/qahome/qaassessments/institutionalelig.html](http://ifap.ed.gov/qahome/qaassessments/institutionalelig.html)

## Recertification

Sec 498(g) and (h) of the HEA  
34 CFR 600.20(b) and (f)

## Eligible nonparticipating school

Nonparticipating eligible schools are only required to renew their eligibility when the Department requests it. Their eligibility status continues indefinitely as long as the school continues to meet the institutional eligibility requirements. If the school wishes to be certified to participate in the FSA programs, it must submit an application and other supporting documentation (see *Chapter 1*).  
34 CFR 600.20(b)(1)

## Changes in ownership

Sec. 498(i) of the HEA

34 CFR 600.31

Family defined

34 CFR 600.21(f)

Excluded Transactions

34 CFR 600.31(e)(1) and (2)

Change in ownership—publicly traded corporation

34 CFR 600.31(c)(2)

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## Electronic submission required

Changes to previous applications, including changes in ownership, reporting, expanding eligibility, and certification must be submitted to the Department through the E-App at:

<http://www.eligcert.ed.gov>

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## Mailing address for supporting documents

U.S. Department of Education

Federal Student Aid

School Eligibility Service Group

830 First Street, NE

Washington, DC 20002-5403

Contact: [caseteams@ed.gov](mailto:caseteams@ed.gov)

Phone (to verify receipt only) (202) 377-3161

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## Partnership or sole proprietorship

A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

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## Parent corporation

An institution that is a wholly-owned subsidiary changes ownership and control when the parent corporation changes ownership and control as described in this section.

## CHANGE IN OWNERSHIP

### *Changes at public institutions*

The Department does not consider that a public institution has undergone a change in ownership that results in a change of control if there is a change in governance, and the institution after the change remains a public institution, provided—

- the new governing authority is in the same state as included in the institution’s program participation agreement; and
- the new governing authority has acknowledged the public institution’s continued responsibilities under its program participation agreement (PPA).

Within 10 days of undergoing a change in governance, however, a public institution must report that change to the Department. The institution must also explicitly acknowledge its continued responsibilities under its PPA. If the documentation transferring control of a public institution to another in-state entity does not specifically acknowledge the aforementioned responsibilities, the institution must acknowledge them in a separate letter or notice.

### *Change in ownership that results in a change of control, structure, or governance*

A change in ownership and control occurs when a person or corporation obtains new authority to control a school’s actions, whether the school is a proprietorship, partnership, or corporation. A change in ownership that results in a change in control includes any change through which a person or corporation

- acquires an ownership interest in the entity that owns the school or the parent corporation of that entity, or
- who owns or acquires an ownership interest attains or loses the ability to control the school.

The most common example of this change in controlling interest is when the school is sold to a new owner. Other kinds of “covered transactions” include—

- the transfer of the controlling interest of stock of the school or its parent corporation;
- the merger of two or more eligible schools;
- the division of one school into two or more schools;
- the transfer of the liabilities of a school to its parent corporation;
- a transfer of assets that comprise a substantial portion of the educational business of the school, except if it is exclusively in the granting of a security interest in those assets; or

- a conversion of the school from a for-profit to a nonprofit school or a nonprofit to a for-profit.

### ***Change in ownership for closely-held corporations***

A *closely-held corporation* (including the term *close corporation*) is—

- A corporation that qualifies under the law of the state of its incorporation as a closely-held corporation; or
- If the state of incorporation has no definition of closely-held corporation, a corporation the stock of which is held by no more than 30 persons; and has not been and is not planned to be publicly offered.

For a closely-held corporation, a change in ownership and control occurs when—

- A person acquires more than 50% of the total outstanding voting stock of the corporation;
- A person who holds an ownership interest in the corporation acquires control of more than 50% of the outstanding voting stock of the corporation; or
- A person who holds or controls 50% or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

### ***Change in ownership for publicly traded corporations***

For *publicly traded corporations*, a change in ownership and control occurs when—

- a person acquires ownership and control of the corporation such that the corporation is required to file a Form 8K with the Securities and Exchange Commission notifying that agency of the change in control; or
- a person who is a controlling shareholder of the corporation ceases to be a controlling shareholder.

A controlling shareholder is a shareholder who holds or controls through agreement *both* 25% or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan.

For a publicly traded corporation, when a change of ownership occurs, instead of a same-day balance sheet, the school may submit its most recent quarterly financial statement as filed with the Securities and Exchange Commission (SEC). Together with its quarterly financial statement, the

### **Excluded transactions—transfers to family members**

Changes of ownership do not include a transfer of ownership and control to a member of the owner's family (whether or not the family member works at the school) that includes:

- parent, stepparent, sibling, step-sibling, spouse, child or stepchild, grandchild or step-grandchild;
- spouse's parent or stepparent, sibling, step-sibling, child or stepchild, or grandchild or step-grandchild;
- child's spouse; and
- sibling's spouse.

Nor does it include a transfer of ownership and control, upon the retirement or death of the owner, to a person (who is not a family member) with an ownership interest in the school who has been involved in management of the school for at least two years preceding the transfer, and who has established and retained the ownership interest for at least two years prior to the transfer.

These are known as excluded transactions, and they apply only to the transfer of the entire portion of the owner's interest.

34 CFR 600.21(f)

34 CFR 600.31(e)

### **Training requirement after a change in ownership or control**

If a school undergoes a change in ownership, the school's chief financial aid administrator and its chief administrator (or a high-level school official designated by the chief administrator) must attend *Fundamentals of Title IV Training*.

If the financial aid administrator and/or the chief administrator have not changed, the school may request a waiver of the training requirement from its School Participation Team. ED may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training.

### Default management plan after change in ownership or status

A school that changes ownership or changes its status as a parent or subordinate institution must adopt the Sample Default Prevention Plan or develop its own default management plan that is approved by the Department. The school must implement the plan for at least two years.

A school is exempt from submitting a default management plan if—

- the parent school and the subordinate school both have a cohort default rate of 10% or less, and
- the new owner of the parent or subordinate school does not own, and has not owned, any other school with a cohort default rate over 10%.

school must submit copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to ED.

Consider a publicly traded school that is provisionally certified because of a change in ownership that experiences another change of ownership. If any controlling shareholder on the newer change of ownership application was listed on the ownership application for which the provisional approval was granted, the expiration date for the original provisional certification remains unchanged if the newer application is approved.

### ***Change in ownership for corporations that are not closely held or registered with the SEC***

A change in ownership and control of a corporation that is neither closely held nor required to be registered with the SEC occurs when a person who has or acquires an ownership interest acquires both control of at least 25% of the total outstanding voting stock of the corporation and managing control of the corporation.

## Preacquisition review

Schools may submit an E-App marked “preacquisition review” before a change in ownership takes place. The purpose of this review is to determine whether the school has answered all the questions completely and accurately. A preacquisition review application must be submitted at least 45 days prior to the expected date of the transaction.

The SPT will notify the school of the results of the review. However, the school will not be given a decision whether or not its application would be approved as a result of this preacquisition review. Please note that a preacquisition review is not required; it is an option.

If the potential owner decides not to purchase the school, he or she must notify the School Participation Team of the decision to withdraw the application.

If the potential owner considering the change in ownership decides to go through with the purchase and wants to participate in the FSA programs, he or she must:

- notify the Department within 10 days of the date the change in ownership actually took place (If this date falls on a weekend or a federal holiday, the notification may be no later than the next business day.); and
- submit the supporting documents required for a materially complete application. (Refer to section “M” of the E-App for the list of specific forms to submit.)



## CHANGES IN OWNERSHIP INTEREST & 25% THRESHOLD

Ownership or ownership interest means a legal or beneficial interest in a school or its corporate parent, or a right to share in the profits derived from the operation of a school or its corporate parent. The school must report any change in ownership interests whenever—

- an owner acquires a total interest of 25% or greater;
- an owner who held a 25% or greater interest reduces his or her interest to less than 25%; or
- an owner of a 25% or greater interest increases or reduces his or her interest but remains the holder of at least a 25% ownership interest.

Because of these reporting requirements, even though transferring ownership interest through death or retirement may be excluded from being considered a change in ownership resulting in a change of control, the resulting change in percentages of ownership interests must be reported to the Department.

A school must report any changes that result in an individual or owner (including a corporation or unincorporated business entity) acquiring the ability to substantially affect the actions of the school. Such a change must be reported within 10 days of the change. A school owned by a publicly traded corporation must report the change within 10 days after the corporation learns of the change. Adherence to these requirements is enforced during the institutional participation approval process, program reviews, and audit process. All schools are bound by these reporting requirements, and substantial penalties may be imposed on schools that fail to comply with them.

An individual or corporation has the ability to substantially affect the school's actions when he, she, or it—

- personally holds, or holds in partnership with one or more family members, at least a 25% ownership interest in the school;
- personally represents (with voting trust, power of attorney, or proxy authority), or represents in partnership with one or more family members, any individual or group holding at least a 25% ownership interest in the school;
- is the school's general partner, chief executive officer (or other executive officer), chief financial officer, individual designated as the lead program administrator for the FSA programs at the school, or a member of the school's board of directors; or
- is the chief executive officer (or other officer) for any entity that holds at least a 25% ownership interest in the school, or is a member of the board of directors for such an entity.

To ensure that its FSA program participation isn't jeopardized, a school must report to the Department an ownership change (including the names of persons involved). On receiving the notification, the Department will investigate and notify the school whether a change in ownership resulting in a change of control has occurred that will require the school to submit a materially complete application.

### 25% Threshold

34 CFR 600.31(c)(2)(ii)(A)

### Ownership interest

Ownership or ownership interest does not include an ownership interest held by:

1. a mutual fund that is regularly and publicly traded;
2. a U.S. institutional investor as defined by the Securities and Exchange Commission;
3. a profit-sharing plan of the school or its corporate parent (provided that all full-time permanent employees of the school or corporate parent are included in the plan); or
4. an Employee Stock Ownership Plan (ESOP).

### **Audits and closeout procedures**

Although a separate financial aid compliance audit is not required when there is a change in ownership, structure, or governance, the prospective owner may choose to have the accounts audited before they are closed out. Questions about FSA accounts or closeout procedures should be addressed to the appropriate School Participation Team (see the “Contacts” listing on the IFAP website at [ifap.ed.gov](http://ifap.ed.gov)).

## **STEPS TO BE TAKEN DURING A CHANGE IN OWNERSHIP**

### ***Steps to be taken by former owners***

If a school is changing control, the former owners must notify the Department about the change and the date it occurs, and provide any supporting information the Department requests. This must be at the same time that the owner notifies the school’s accrediting agency, but no later than 10 days after the change occurs. (If the former owner fails to notify the Department, the prospective owner is responsible for doing so.) The current owner also must notify the state agency that licenses or approves the school.

### ***Steps to be taken by prospective owners***

The prospective owner should request that the former owner provide copies of the school’s existing Eligibility and Certification Approval Report (ECAR), school refund policy, return of FSA funds policy, any required default management plan, program reviews, audited financial statements (for at least the two most recently completed fiscal years), and compliance audits. The prospective owner will need this information to receive approval to participate.

Accompanying the application must be audited financial statements for the school’s two most recently completed fiscal years (if the school has not yet submitted statements for those years), an audited balance sheet showing the financial condition of the school at the time of the change, and a default management plan (if required). Each participating school must demonstrate financial responsibility independently. If the entity that has acquired the school is an ongoing entity (partnership or corporation), the school must also submit completed audited financial statements of the acquiring entity for the last two consecutive fiscal years. For information on financial responsibility and submitting audited financial statements see *Chapter 4*.

The school also must submit proof that its accreditation is continued under the new ownership or control, along with a photocopy of its state legal authorization under the new ownership.

The school may not award FSA program funds until it receives a new PPA signed on behalf of the Secretary.

### ***Accepting liabilities and responsibility for return of funds***

If new owners acquire a school or if a school is the result of the merger of two or more schools that formerly were operating separately, the new owner is liable for any debts that accrued from the former owner’s FSA program administration. A new owner accepts liability for any federal funds that were given to the school but that were improperly spent before the date the change in ownership, structure, or governance became effective. A new owner must also abide by the school’s refund and the FSA Return of Funds policy for students enrolled before the date the change became effective, and must honor all student enrollment contracts signed before the date of the change.

### ***Payments to eligible students***

Before the change in ownership, structure, or governance takes place, the former owner should make sure that all students receive any FSA payments already due them for the current payment period and that all records are

current and comply with federal regulations. If the school needs additional funds for its students for the current payment period, it should request them and disburse them to all eligible students before the change takes place.

The school loses its approval to participate in the FSA programs when the change takes place. Generally, a school may

- use Pell Grant or Campus-Based funds that it has received or request additional Pell Grant or Campus-Based funds from the Department to satisfy any unpaid commitment made to a student from the date the school's participation ended until the scheduled completion date of the payment period; and
- credit a student's account with the proceeds of a second or subsequent disbursement of a Direct Loan to satisfy any unpaid commitment made to the student under the Direct Loan Program from the date participation ends until the scheduled completion of that period of enrollment. (The proceeds of the first disbursement of the loan must have been delivered to the student or credited to the student's account prior to the end of the participation.)

The school must notify all new students that no federal aid funds can be disbursed until the school's eligibility is established and a new PPA signed by the Department is received.

Beginning on the date that the change becomes effective, The school may no longer award FSA funds. If the school's prospective owners wish the school to participate in one or more of the FSA programs, the school must submit a materially complete application to the Department.

The school can apply for preacquisition review (described in the previous section) and temporary provisional approval after the change in ownership (described in the next section).

### Definition of commitment

A commitment under the Pell and TEACH grant programs occurs when a student is enrolled and attending the school and has submitted a valid student aid report to the school or when a school has received a valid institutional student information report.

A commitment under the Campus-Based programs occurs when a student is enrolled and attending the school and has received a notice from the school of the amount that he or she can expect to receive and how and when that amount will be paid.

34 CFR 668.26(e)(1)

## Temporary approval

Temporary approval  
Sec. 498(i)(4) of the HEA  
34 CFR 600.20(g) and (h)  
Audits  
34 CFR 668.23

## TEMPORARY APPROVAL FOR CONTINUED PARTICIPATION

The Department, at its discretion, may permit a school undergoing a change in ownership that results in a change in control to continue to participate in the FSA programs on a provisional basis if the school meets the following specific requirement.

The school must submit a materially complete application that must be received by the Department no later than 10 business days after the change becomes effective. A materially complete application for the purpose of applying for a temporary approval must include—

- a completed application form;
- a copy of the school's state license or equivalent that was in effect on the day before the change in ownership took place;
- a copy of the accrediting agency's approval (in effect on the day before the change in ownership) that granted the school accreditation status including an approval of the nondegree programs it offers;
- financial statements of the school's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of the Generally Accepted Accounting Principles (GAAP), published by the Financial Accounting Standards Board, and the Generally Accepted Governmental Auditing Standards (GAGAS) published by the U.S. General Accounting Office (submitted via eZ-Audit at <https://ezaudit.ed.gov>);
- audited financial statements for the school's new owner's two most recently completed fiscal years that are prepared and audited in accordance with GAAP and GAGAS, or acceptable equivalent information for that owner (submitted via eZ-Audit at <https://ezaudit.ed.gov>); and
- a completed signature page, Section L.

If the application is approved, the School Participation Team will send the school a Temporary Provisional Program Participation Agreement (Temporary PPA). The Temporary PPA extends the terms and conditions of the PPA that were in effect for the school before its change of ownership.

The Temporary PPA expires on the earlier of the—

- date that the Department signs a new program participation agreement;
- date that the Department notifies the school that its application is denied; or
- last day of the month following the month in which the change of ownership occurred unless the school provides the necessary documents described as follows.

The Department can automatically extend the Temporary PPA on a month-to-month extension if, prior to the expiration date, the school submits—

- a same day balance sheet showing the school's financial position on the day the ownership changed, prepared in accordance with GAAP and audited in accordance with GAGAS;
- approval of the change of ownership from the school's state agency that legally authorizes postsecondary education in that state (if not already provided);
- approval of the change of ownership from the school's accrediting agency (if not already provided); and
- a default management plan that follows examples provided by the Department, or notification that it is using ED's plan or is exempt from providing a plan (see exceptions under *Change in Ownership for For-Profit and Nonprofit Institutions*).

### **Electronic submission required**

Changes to previous applications, including changes in ownership, reporting, expanding eligibility, and certification must be submitted to the Department through the E-App (<http://www.eligcert.ed.gov>).

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### **Notifying ED if school exceeds limitations on types of students**

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted application (limitations on students who are enrolled without a high school diploma or equivalent, incarcerated students, and correspondence study) the school must notify ED via the E-App. ED will advise the school of its options, including whether the school might be eligible for a waiver. (See *Chapter 4* for additional information.)

## **REPORTING SUBSTANTIVE CHANGES**

A school is required to report changes to certain information on its approved application, as listed on the following pages. A school may also wish to expand its FSA eligibility and certification. Some of these changes require the Department's written approval before the school may disburse the FSA program funds; others do not.

If a change occurs in an E-App item not listed on the following pages, the school must update the information when it applies for recertification.

When the Department is notified of a change, if further action is needed, it will tell the school how to proceed, including what materials and what additional completed sections of the E-App need to be submitted. If a school has questions about changes and procedures, it should contact the appropriate School Participation Team.

After receiving the required materials (and depending on the circumstances), the Department will evaluate the changes, approve or deny them, and notify the school.

### ***Approval required from accreditor & state agency***

For a change requiring written approval from the Department (unless otherwise noted) and for some changes that do not require written approval from the Department, a school must obtain approval from the appropriate accrediting agency and state authorizing agency.

### ***Notification of school closure or bankruptcy***

If a school closes or files for bankruptcy, the school must notify the Department within 10 calendar days of either event by sending a letter on the school's letterhead that indicates the date the school closed or plans to close, or the date the school filed for bankruptcy, as appropriate.



## Changes requiring written approval from ED

All schools must report and wait for written approval from the U.S. Department of Education before disbursing funds when the following occur (the number in parentheses refers to the number of the question on the E-App):

1. a change in accrediting agency (notify the Department, when you begin making any change that deals with your school's institution-wide accreditation) (#15);
2. a change in state authorizing agency (#17);
3. a change in institutional structure (#18);
4. an increase in the level of educational programs beyond the scope of current approval (#26);
5. the addition of accredited and licensed nondegree programs beyond the current approval (#27);
6. the addition of short-term (300–599 clock-hour) programs (#27);
7. changes to the FSA programs for which the school is approved.\* (Approvals from your accrediting agency and state authorizing agency are not required for this change.) (#37);
8. a change in the type of ownership (#22–24);
9. a change in ownership (#24); and
10. the addition of an accredited and licensed location (#30) (see *Adding Locations* later in this chapter), and when a school—
  - a. is provisionally certified; or
  - b. is on the cash monitoring or reimbursement system of payment; or
  - c. has acquired the assets of another school that provided educational programs at that location during the preceding year, and the other school participated in the FSA programs during that year; or
  - d. would be subject to a loss of eligibility under the cohort default rate regulations (34 CFR 668.188) if it adds that location; or
  - e. has been advised by the Department that the Department must approve any new location before the school may begin disbursing FSA funds.

When one of the changes that requires the Department's written approval occurs, a school must notify the Department. The school must apply to the Department for approval of the change via the electronic application within 10 calendar days of the change (in the case of a change in ownership, 10 *business* days). As soon as the school has received approvals for the change from its accrediting agency and state authorizing agency, it must send to the Department:

- copies of the approval for the change,
- any required documentation, and
- Section L of the E-App containing the original signature of the appropriate person.

\* For TEACH Grants, select "Add TEACH Grants" and then use question 69 to explain the eligibility criteria that your school meets for TEACH participation. See DCL GEN 08-07.

## Changes that do not require ED's written approval

Though they need not wait for the Department's approval before disbursing funds, all schools must **report** the following information to the Department.

1. change to name of the school\* (#2)
2. change to the name of a CEO, president, or chancellor (#10)
3. change to the name of the chief fiscal officer or chief financial officer (#11)
4. change in the individual designated as the lead program administrator (financial aid administrator) for the FSA programs (#12)
5. change in governance of a public institution (#24)
6. a decrease in the level of program offering (e.g., the school drops all its graduate programs) (#26)
7. change from or to clock hours or credit hours (#27)
8. address change for a principal location\* (#29)
9. name or address change for other locations\* (#30)
10. the closure of a branch campus or additional location that the school was required to report (#30)
11. the addition of an accredited and licensed location unless the school meets the conditions specified on the previous page (34 CFR 600.20(c)(1)) (#30)
12. change to the school's third-party servicers that deal with the FSA program funds (#58)

When one of these changes occurs, a school must notify the Department by reporting the change and the date of the change to the Department via the E-App within 10 calendar days of the change. In addition, a school must mail to the School Eligibility Service Group (see address on second page of chapter):

- any required supporting documentation, and
- Section L of the E-App containing the original signature of the appropriate person.

## Foreign school reporting on the E-App

A foreign school must report changes to its postsecondary authorization (#42), degree authorization (#43), program equivalence (#44), program criteria (#45), or to its U.S. administrative or recruiting office (#46).

A foreign medical school must report changes to the facility at which it provides instruction (#47), its authorizing entity (#46), the approval of its authorizing entity (#46), the length of its program (#46), or the clinical or medical instruction that it provides in the U.S.

## Other changes reported on the E-App

- Change to address for FSA mailings to an address different than the legal street address (#13)
- Change to address for FSA mailings to an additional location that is different than the legal street address (#30)
- Change of Taxpayer Identification Number (TIN) (#6a)
- Change of DUNS number (#6b)
- Change in board members (#20)
- Reporting foreign gifts (see *Chapter 12*) (#71)
- Change to institution's website address (#9)
- Change of phone/fax/e-mail of CEO, president, or chancellor (#10)
- Change of phone/fax/e-mail of CFO (#11)
- Change of phone/fax/e-mail of financial aid administrator (#12)

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\* As soon as it has received approvals for the change from its accrediting agency and state authorization agency, a school must send the Department copies of the approvals for change.

## CHANGES TO LOCATION, BRANCH, OR CAMPUS

The Eligibility and Certification Approval Report (ECAR) that the Department sends to the school lists the educational programs and locations that are eligible. (The eligibility of a school and its programs does not automatically include separate locations and extensions.) If, after receipt of the ECAR, a school wishes to add a location at which at least 50% of an educational program is offered, it must notify the Department.

### *Eligibility of additional locations*

For purposes of qualifying as an eligible location, an additional location is not required to satisfy the two-year requirement unless:

- the location was a facility of another school that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the school or the school's students,
- the applicant school acquired, either directly from the school that closed or ceased to provide educational programs, or through an intermediary, the assets at the location, and
- the school from which the applicant school acquired the assets of the location is not making payments in accordance with an agreement to repay a liability for a violation of FSA program requirements.

An additional location that falls into one of the aforementioned categories is not required to satisfy the two-year rule (see *Chapter 1*) if the applicant school agrees:

- to be liable for all improperly expended or unspent FSA funds received by the school that has closed or ceased to provide educational programs,
- to be liable for all unpaid refunds owed to students who received FSA funds, and
- to abide by the policy of the school that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

Each site must be legally authorized. To apply for eligibility for an added location, the school must submit an E-App to the Department with the required application sections completed, a copy of the accrediting agency's notice certifying that the new location is included in the school's accredited status, and a copy of the state legal authorization from the state in which the additional site is physically located.

## Regulations

Reporting

34 CFR 600.21

Approval required

34 CFR 600.20(c)(1)

Disbursing prohibited

34 CFR 600.20(f)(3)

34 CFR 600.21(d)

## Teach-outs at closed school locations

A school that conducts a teach-out at a site of a closed school may apply to have that site approved as an additional location if the closed school ceased operations and the Department has taken a limitation, suspension, termination, or emergency action, regardless of whether the Department took that action before or after the school closed. The teach-out must be approved by the school's accrediting agency.

The school that conducts the teach-out may establish a permanent additional location at the closed school without having to satisfy the 2-year requirement and without assuming the liabilities and cohort default rate of the closed institution, provided the schools are not commonly owned or managed.

See 34 CFR 600.32(d), as amended on October 29, 2009, for further details.

HEOA 2008, §496, HEA §498

Effective date: August 14, 2008

## Liability for disbursements if change not approved

If a school does not obtain ED approval for a new location, branch, program, or increase in program offering, the school is liable for all FSA funds it disburses to students enrolled at that location or branch or in that program.

### **Effects of closure of branch or additional location**

A school that is considering adding a branch or an additional location should include in its deliberations the effect that a closure of a branch or additional location might have on the school's financial condition.

If a branch or additional location of an institution closes and borrowers who attended the school obtain loan discharges by reason of the closure of the branch or location (or improper ATB or loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals. HEA 437(c)(1)

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### **Branch campus defined**

A location of an institution that is geographically apart and independent of the main campus of the institution.

ED considers a location of an institution to be independent of the main campus if the location

- 1) is permanent in nature;
  - 2) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
  - 3) has its own faculty and administrative or supervisory organization; and
  - 4) has its own budgetary and hiring authority.
- 34 CFR 600.2

### **Reporting a new location**

All schools are required to report (using the E-App) to the Department adding an additional accredited and licensed location where they will be offering 50% or more of an eligible program if the school wants to disburse FSA program funds to students enrolled at that location.

Schools must not disburse FSA program funds to students at a new location before the school has reported that location and submitted any required supporting documents to the Department. Once it has reported a new licensed **and** accredited location, unless it is a school that is required to apply for approval for a new location (see below), a school may disburse FSA program funds to students enrolled at that location.

### **Applying for approval of a new location**

If a school meets one or more of the following criteria, it must apply for *and wait for approval* before disbursing FSA funds at an additional location where it will be offering 50% or more of an eligible program:

- The school is provisionally certified.
- The school is on the cash monitoring or reimbursement system of payment.
- The school has acquired the assets of another school that provided educational programs at that location during the preceding year, and the other school participated in the FSA programs during that year.
- The school would be subject to a loss of eligibility under the cohort default rate regulations if it adds that location, or
- The school was previously notified by the Department that it must apply for approval of an additional location.

The Department will review the information and will evaluate the school's financial responsibility, administrative capability, and eligibility. Depending upon the circumstances, the Department may conduct an on-site review. If it approves the additional location, a revised ECAR and Approval Letter will be issued. The location is eligible as of the date of the Department's determination.

### **Changing the status of a campus or branch**

If a school wishes to seek approval for a branch campus, the school must submit a completed application with the required supplemental documentation (see the following list) on (1) the main campus and (2) the proposed branch campus.

A branch campus of an eligible proprietary institution of higher education or postsecondary vocational school must be in existence for at least two years (after it is certified in writing by the Department as a branch campus) before seeking to be designated as a main campus or a freestanding school.

## Documentation required for approval of a branch campus

The following required supplemental documentation must be submitted for the School Participation Team to make a determination as to whether a non-main campus educational site is an eligible branch campus:

- A statement listing the distance between the main institution and the applicant non-main campus educational site.
- State authorization of the quasi-independent status of the non-main campus educational site from the main institution in any of the following forms: applicable state law, state charter, university system organization document, or state department of education or state board or regents' regulations or documentation.
- State authorization (in any of the four forms above) for the non-main educational site to have its own faculty and administrative staff, its own operating budget, and its own authority to hire and fire faculty and staff.
- An official statement from the school describing the hiring authority of the non-main educational site.
- A statement from the main institution's primary accrediting agency indicating that it has accredited both the main institution and the non-main educational site through separate on-site visitations, and that the non-main educational site's accreditation is distinct yet dependent upon the main institution.
- A specific description of the relationship between the main campus of an institution of higher education and all of its branches, including a description of the student aid processing that is performed by the main campus and that is performed at its branches.
- The operating budget of the non-main campus educational site for the current year and the two prior fiscal years.
- Consolidated financial statements for the prior two years showing a breakdown of the applicant's financial circumstances.
- Other documents requested by the School Participation Team.

**CIP codes**

Classification of Instructional Programs (CIP) codes are developed by the U.S. Department of Education's National Center for Education Statistics.  
<http://nces.ed.gov/pubs2002/cip2000/>

**Reporting self-determined programs on the E-App**

If you have added programs that you did not need to report to the Department, when you next apply for recertification, you must add those programs to your E-App.

**Consequences of erroneous self-determination**

If the school's self-determination of eligibility for an educational program is found to be incorrect, the school is liable for all FSA program funds received for the program and all FSA program funds received by or for students enrolled in that program.

**Approval for 300–600 clock-hour programs**

The requirement to apply for and wait for written approval from the Department continues to apply to programs that are at least 300 clock hours but less than 600 clock hours.

**Limitations for schools subject to "2-year rule"**

For schools subject to the 2-year rule (see *Chapter 1*), during the school's initial period of participation in the FSA programs, ED will not approve adding programs that would expand the school's eligibility beyond the current ECAR. An exception may be considered if the school can demonstrate that the program was legally authorized and continuously provided for at least 2 years prior to the date of the request.

In addition, a school subject to the 2-year rule may not award FSA funds to a student in a program that is not included in the school's approval documents.

**Programs for students with intellectual disabilities**

Schools must apply through the E-App and receive approval to add an eligible comprehensive transition and postsecondary program before awarding FSA funds to students with intellectual disabilities.

**ADDING PROGRAMS*****Adding a program—when a school may make eligibility determinations***

An additional educational program is a program—

- with a CIP code (see sidebar) that is different from any other program offered by the school;
- that has the same CIP code as another program offered by the school but leads to a different degree or certificate; or
- that the school's accrediting agency determines to be an additional program.



Except for direct assessment programs or pursuant to a requirement included in a school's Program Participation Agreement, a school does not have to apply for approval to add any other type of educational program. However, a school must notify the Department in advance when it intends to add a gainful employment program—see the discussion at the end of this section. After receiving the school's notification regarding a gainful employment program, the Department may send an alert to the school informing the school that it must wait for approval.

Before the school may determine these programs to be eligible and disburse funds to enrolled students, the school must have received both the required state and accrediting agency approvals. The school must include any "self-certified" programs on its next recertification application, and provide copies of the state and accreditor approvals.

***ED must approve all other added programs***

In all other cases, the eligibility of an added educational program must be determined by the Department before FSA program funds can be awarded. The school must submit an E-App with the appropriate sections completed, and copies of the approval of the new program from its accrediting agency and state authorizing agency. The Department will evaluate the new program and the school. If the Department approves the additional program, a revised ECAR and Approval Letter is issued for the school, and the school is eligible as of the date of the Department's determination. Only after receiving an Approval Letter may the school begin disbursing FSA funds to students enrolled in the program. For more on program eligibility, see *Chapter 2*.

***School must notify ED when adding new gainful employment program***

The school must notify the Department at least 90 days before the first day of class when it intends to add an educational program that prepares students for gainful employment in a recognized occupation. The school may proceed to offer the program described in its notice, unless the Department advises the school that the additional educational program must be approved under §600.20(c)(1)(v).





The school's notice to the Department must include sufficient information to demonstrate that the program meets the requirements of an eligible program, as discussed in Chapter 2. The notice must include—

- the date of the first day of class of the new program;
- a description of how the school determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs (any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics (BLS) data related to the program).
- a description of how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program.
- documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized state agency for the approval of public postsecondary vocational education.

Unless the Department requires approval for a new program, the school is not required to get Department's approval after notification is submitted. If the Department needs to approve the program, an alert notice will be sent to the school at least 30 days before first day of class.

If the school's notification to the Department was not timely, the school must obtain the Department's approval.

## CHANGES IN ACCREDITATION

If a school decides to change its accrediting agency, it must notify the school participation team (SPT) when it begins the process of obtaining accreditation from the second agency. As part of this notice, the school must submit materials relating to its current accreditation and materials demonstrating a reasonable cause for changing its accrediting agency. If a school fails to properly notify the Department, the Department will no longer recognize the school's existing accreditation.

If a school decides to become accredited by more than one accrediting agency, it must submit to the SPT (and to its current and prospective agency) the reasons for accreditation by more than one agency. This submission must be made when the school begins the process of obtaining the additional accreditation. If a school obtains additional accreditation and fails to properly submit to the Department its reasons for the additional accreditation, the Department will not recognize the school's accredited status with either agency.

## Gainful employment programs

"Gainful employment" refers to certain programs offered at public, private nonprofit, and proprietary institutions, as defined in Chapter 2.



## Notifying ED of new gainful employment program

34 CFR 600.10(c)

34 CFR 600.20

Program leading to gainful employment

34 CFR 668.8(c)(3) or (d)

## Other requirements for gainful employment programs

Disclosure (student information); see Chapter 6.

Reporting information to ED on gainful employment programs at your school; see Chapter 8.

## Timelines for notification to ED

For new gainful employment programs where the first day of class will begin on or after July 1, 2011, and before October 1, 2011, notification must be provided no later than July 1, 2011. If the institution does not provide the required notification by July 1, 2011, it must wait for Departmental approval before disbursing funds to students enrolled in the new gainful employment program.

The institution must also inform students that the program has not been approved by the Department to be eligible for federal student aid.

For new gainful employment programs where the first day of class will begin on or after October 1, 2011, institutions must provide notification to the Department at least 90 days prior to the first day of class. If the institution does not give notice at least 90 days before the first day of class, it must wait for Departmental approval before disbursing funds to students enrolled in the new gainful employment program and must inform students that the institution has not received the Department's approval for the program to be eligible for federal student aid.

## Changing accrediting agencies

34 CFR 600.11

### **Gainful employment programs subject to FSA requirements**

Nothing in the regulations, GEN-11-10, or Gainful Employment Announcement #5 supersedes the requirement that a provisionally certified institution must wait for Departmental approval before disbursing FSA funds to students enrolled in any new program or the requirement that the school must wait for approval before disbursing FSA funds to students enrolled in a new program if it receives a notice to that effect from the Department.

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### **Liability if approval is not obtained**

If the school fails to obtain the Department's approval to offer an additional gainful employment program, the school must repay all FSA funds that it received for the educational program, and all FSA funds received by or on behalf of students who enrolled in that program.

If the Department ceases to recognize a school's accreditation, the school is no longer eligible to award FSA program funds or take part in other programs under the Higher Education Act of 1965, as amended.

If a school becomes accredited by more than one agency, it must notify its school participation team which agency's accreditation the school will use for determining its eligibility for the FSA programs.

### ***Loss of accreditation***

If a school loses its primary accreditation, it is ineligible to participate in the FSA programs and must notify the Department within 10 days of the loss of accreditation. (For any dispute involving the termination of accreditation, an accredited or preaccredited school must agree to submit to binding arbitration before initiating any other legal action.) However, if a school's accrediting agency loses its recognition from the Department, the school has up to 18 months in which to obtain accreditation from another recognized agency. Other changes in accreditation may also jeopardize institutional participation.

### ***Change in institution-wide accreditation***

If the school decides to change its institution-wide accreditation, it must notify the Department when it begins the accreditation application process with a different agency. (Note that it must also notify the Department when it completes the process.) As part of the notice, the school must submit materials about its current accreditation and materials demonstrating reasonable cause for changing accreditation. If the school fails to notify the Department of the proposed change to its institution-wide accreditation, or if the school does not provide the materials just described, the Department will not recognize the school's existing accreditation. If this happens, or if the school drops its association with its former accreditor before obtaining Department approval of the change, the school would no longer have accredited status and would no longer be eligible to award FSA funds.

Therefore, when a school secures new institution-wide accreditation it must notify the Department using the online electronic application (E-App). At that time, it must advise the Department which accrediting agency will be its accreditor for purposes of FSA gatekeeping. Only after the Department provides written notice that it recognizes the new accreditor as the institution's primary accreditor should the school drop its association with its prior accreditor.

### ***Changing to accreditation by more than one institution-wide accrediting agency***

If the school decides to become accredited by more than one institution-wide accrediting agency, it must notify the Department when it begins the process of obtaining additional accreditation.

As part of the notice, the school must report (in question 15 of the E-App) its current institution-wide accrediting agency, the prospective institution-wide accrediting agency, and the reason (in question 69 of the E-App) it wishes to be accredited by more than one agency. If the school obtains the additional institution-wide accreditation and fails to notify the Department of the reason for the additional accreditation, the Department

will not recognize the school's accredited status with either agency. This means the school would lose its accredited status and its eligibility to award FSA funds.

## CHANGES TO 3RD-PARTY SERVICERS

Schools are required to notify the Department of all third-party servicer contracts. If a school has submitted information regarding its third-party servicers as part of applying for certification or recertification, no additional submission is required.

The school must promptly notify the Department of any of the following changes to servicer arrangements:

- the school enters into a contract with a new third-party servicer,
- the school significantly modifies a contract with an existing third-party servicer,
- the school or one of its third-party servicers terminates a contract, or
- a third-party servicer ceases to provide contracted services, goes out of business, or files for bankruptcy.

A school notifies the Department by updating Section J of the E-App within 10 days of the date of the change or action. This notification must include the name and address of the servicer and the nature of the change or action.

A school is only required to submit a copy of its contract with a third-party servicer if the Department requests it. A school is not required to submit the contract as part of the recertification process. (See *Chapter 3* for more information about contracts with third-party servicers.)



# Providing Consumer & Safety Information

*This chapter describes information that a school must provide about financial aid and its campus, facilities, and student-athletes, as well as information to promote campus security and fire safety, and to prevent drug and alcohol abuse. It also discusses counseling for students receiving FSA loans, and disclosures that must be made for private education loans. Additional disclosure requirements that are specific to disbursements of FSA loans are described in Volume 4.*

## AVAILABILITY OF INFORMATION

### Notice to enrolled students

Each year a school must distribute to all enrolled students a notice of the availability of the information it must provide in the following general categories:

1. general disclosures for enrolled or prospective students,
2. annual security report and annual fire safety report,
3. report on athletic program participation rates and financial support data (Equity in Athletics Data or EADA), and
4. FERPA information (Family Educational Rights and Privacy Act of 1974, discussed in *Chapter 7*).

The notice must list and briefly describe the information and tell the student how to obtain the information.

The notice must be provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

### Web dissemination

A school may satisfy the requirements for the general disclosures and the EADA, security, and fire safety reports by posting the information on the Web.

- *Enrolled students or current employees*—the school may post the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed.
- *Prospective students or prospective employees*—the school may post the information on an Internet website.

## CHAPTER 6 HIGHLIGHTS

- Availability of information
- General student disclosures
- Disclosures and gainful employment
- Campus crime and safety information
- Information about athletics
- Textbook information
- Loan counseling
- Drug & alcohol abuse prevention
- Misrepresentation
- Information about private loans

## Consumer information

HEA Sec. 485(f); 20 USC 1092

Regulations: 34 CFR 668.41–48

Notice to enrolled students: 34 CFR 668.41(c)

Web dissemination: 34 CFR 668.41(b), (c)(2),

(e)(2) through (4), and (g)(1)(ii)

Availability of school staff: 34 CFR 668.44

## Suggestions for disseminating HEA-required information

The National Postsecondary Education Cooperative (NPEC) has issued a publication entitled *Information Required to Be Disclosed Under the Higher Education Act of 1965: Suggestions for Dissemination*.

(NPEC 2010-831), prepared by Carol Fuller and Carlo Salerno, Coffey Consulting.

This publication is available at:

<http://nces.ed.gov>

Note: NPEC was established by the National Center for Education Statistics (NCES) in 1995 as a voluntary organization comprising federal agencies, postsecondary schools, associations, and others with an interest in postsecondary education data collection.

The information and opinions in NPEC publications do not necessarily represent the policy or views of the U.S. Department of Education or NCES.

## Assessing your school's compliance

To assess your school's compliance with the provisions of this chapter, see the FSA Assessment module for "Consumer Information," at

[www.ifap.ed.gov/qahome/qassessments/consumerinformation.html](http://www.ifap.ed.gov/qahome/qassessments/consumerinformation.html)

## Civil penalty

In addition to limiting, suspending, or terminating the participation of any school that fails to comply with the consumer information requirements, the Department may impose civil fines of up to \$27,500 for each violation.

Civil penalty  
Sec. 487(c)(3)(B) of the HEA

## Sample notice of FERPA rights

You can find a sample notification at ED's FERPA website

[www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html](http://www.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html)

A school that uses Internet or Intranet disclosure for this purpose must include in its annual notice to enrolled students—

- The exact electronic address at which the information is posted, and
- A statement that the school will provide a paper copy of the information on request.

In the case of Internet or Intranet distribution of the security and fire safety reports to current employees, the school must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the school will provide a paper copy of the report upon request.

The same information must be included in a notice to prospective students and employees if a school that decides to use the Web to provide annual security or fire safety reports to them. The only difference is that there is no annual date for distribution of this notice. In the case of Web distribution to prospective students and employees, note that the school must use an Internet, rather than an Intranet, site.

## *Availability of employees for information dissemination purposes*

A school must designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information on financial assistance, the school, graduation and completion rates, and security policies and crime statistics, as described in the following sections.

If the school designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that school. If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that school.

The Department may waive this requirement if the school's total enrollment, or the portion of the enrollment participating in the FSA programs, is too small to necessitate an employee or group of employees being available on a full-time basis. The school must request this waiver from the Department.

## General disclosure

General disclosure: 34 CFR 668.41(d)  
Financial assistance: 34 CFR 668.42  
Institutional information: 34 CFR 668.43  
Completion/graduation rates: 34 CFR 668.45  
Retention, placement, postgraduate study:  
34 CFR 668.41(d)(4), (5), and (6)  
Definitions: 34 CFR 668.41(a) and 668.47(b)

## GENERAL STUDENT DISCLOSURES

A school must make the following information available to any enrolled student or prospective student through appropriate publications, mailings, or electronic media.

### *Financial assistance available to students*

At a minimum, the school must publish and make readily available to current and prospective students a description of all the federal, state, local,



private, and institutional student financial assistance programs available to its students, including both need-based and non-need-based programs.

For each of these financial aid programs, the information provided by the school must describe—

- the procedures and forms by which students apply for assistance,
- the student eligibility requirements,
- the criteria for selecting recipients from the group of eligible applicants, and
- the criteria for determining the amount of a student's award.

The school may describe its own financial assistance programs by listing them in general categories.

The school must also describe the rights and responsibilities of students receiving financial assistance and, specifically, Federal Student Aid funds. This description must include specific information regarding—

- criteria for continued student eligibility under each program,
- satisfactory progress standards that the student must meet to receive financial assistance; and criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance (see *Volume 1*),
- the method by which financial assistance disbursements will be made to the students and the frequency of those disbursements,
- the way the school provides for Pell-eligible students to obtain or purchase required books and supplies by the 7th day of a payment period (see *Volume 4* for conditions), and how the student may opt out.
- the terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans,
- the general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package,
- the terms and conditions of the loans students receive under the Direct Loan and Perkins Loan programs, and
- the exit counseling information the school provides and collects as described later in this chapter. (Also see *Volume 6* for Perkins Loans exit counseling.)



## Explaining verification requirements

Although it is not among the financial aid disclosures given to all students, you should be aware of the following information that must be provided in writing to students who are selected for verification—

1. Documents required for verification,
2. Student responsibilities—including correction procedures, deadlines for completing any actions required, and the consequences of missing the deadlines.
3. Notification methods—how your school will notify students if their awards change as a result of verification, and the time frame for such notification.

34 CFR 668.53

## Consumer information from the Department

The Department is required to make available to schools, lenders, and secondary schools descriptions of the FSA programs to assist students in gaining information through school sources, and to assist schools in carrying out the FSA program requirements.

We provide comprehensive student aid information to students and their families through the *Student Aid on the Web* site (<http://studentaid.ed.gov>).

Colleges and high schools may order bulk quantities of student/borrower publications such as the *College Preparation Checklist* from the FSA Pubs website ([www.fsapubs.gov](http://www.fsapubs.gov)).

Statutory requirement:  
HEA Sec. 485

## Net Price Calculator

A school with undergraduate students that participates in the FSA programs must have posted a net price calculator on its website by October 29, 2011.

The net price calculator uses institutional data to provide estimated net price information to current and prospective students and their families based on a student's individual circumstances.

ED's National Center for Education Statistics has designed and developed a fully functional net price calculator available to all schools. A school may use the Department's net price calculator template or develop its own. Institutionally developed calculators must include "at a minimum the same data elements" found in the Department's Net Price Calculator template.

To use or review the template, go to <http://npc.inovas.net/institution/>

More information about the calculator and the template is available at: <http://nces.ed.gov/ipeds/resource>

See GEN–08–12 (pages 33ff) for a description of the requirements for the calculator. Higher Education Opportunity Act of 2008 20 USC 1015a

## College affordability website

The Department's College Affordability and Transparency Center (<http://collegecost.ed.gov/catc/Default.aspx>) includes information for students, parents, and policymakers about college costs at America's colleges and universities. The Center includes several lists of institutions based on the tuition and fees and net prices (the price of attendance after considering all grant and scholarship aid) charged to students. These lists meet requirements outlined in the HEOA and will be updated annually and posted on the College Navigator website (<http://nces.ed.gov/collegenavigator/>) by July 1.

## Vaccination policy

Schools must make available to current and prospective students information about its vaccinations policies. Higher Education Opportunity Act of 2008 HEA section 485(a)

## Information about the school's academic programs, costs, facilities, & policies

At a minimum, the school must provide to enrolled and prospective students the following information about itself.

### Academic programs—

- The current degree programs and other educational and training programs.
- The instructional, laboratory, and other physical facilities that relate to the academic program.
- The school's faculty and other instructional personnel.
- Any plans by the school to improve its academic program, upon a determination by the school that such a plan exists.
- A description of the written arrangements it has entered into (see **NEW** Written Arrangements in *Chapter 2*).

### School costs—

- Tuition and fees charged to full-time and part-time students.
- Estimates of costs for necessary books and supplies.
- Estimates of typical charges for room and board.
- Estimates of transportation costs for students.
- Any additional cost of a program in which a student is enrolled or expresses a specific interest.

### Withdrawal procedures, refunds, and return of aid—

- The requirements and procedures for officially withdrawing from the school.
- Any refund policy with which the school is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the school.
- A summary of the requirements for the return of FSA grant or loan funds (see *Volume 5*).

### Accreditation and licensure—

- The names of associations, agencies, or governmental bodies that accredit, approve, or license the school and its programs.
- The procedures by which documents describing that activity may be reviewed—the school must make available for review to any enrolled or prospective student a copy of the documents describing its accreditation, approval, or licensing.
- Contact information for filing complaints with its accreditor, its state approval or licensing entity, and any other relevant state official or agency that would appropriately handle a student's complaint.

*Disability—*

- The services and facilities available to students with disabilities, including students with intellectual disabilities (see *Volume 1* for a definition for students with intellectual disabilities).

*FSA eligibility for study abroad—*

- A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the FSA programs.

*Transfer of credit policies—*

- Any established criteria the school uses regarding the transfer of credit earned at another institution.
- A list of postsecondary schools with which the school has established an articulation agreement.

*Contact information—*

- The titles of persons designated by the school to provide information to enrolled and prospective students and information regarding how and where those persons may be contacted.

*Penalties and institutional policies on copyright infringement—*

- A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities.

**Student access to accreditation/ approval documents**

The school must make available for review, upon request of any enrolled or prospective student, a copy of the documents describing the school's accreditation and its state, federal, or tribal approval or licensing.

**Copyright information**

The sample statement and other copyright requirements are included in GEN 10–08. See *Chapter 7* for the requirement to develop copyright policies: 34 CFR 668.43(a)(10)

## Sample statement of penalties for copyright infringement

A school may use this sample statement to meet the requirement that it disseminate a summary of the penalties for violating federal copyright law. The use of this sample summary is optional.

### Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or

"statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. For more information, please see the website of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov).

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### Student Right-to-Know

HEA Sec. 485(a)  
34 CFR 668.45

- A summary of the penalties for violation of federal copyright laws (see the following sample statement).
- A description of the school's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the school's information technology system.
- The legal alternatives for downloading or otherwise acquiring copyrighted material, based on the school's periodic review described in *Chapter 7*. (This information is to be provided through a website or other means.)

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### Retention Rates

34 CFR 668.41 and 45

#### *Disseminating completion, graduation, and transfer-out rates (Student Right-to-Know)*

As explained in *Chapter 8*, a school must report its completion or graduation rates (and, if required, the transfer-out rate) to the Department through the IPEDS website. A school must make its annual rates available no later than July 1st each year.

In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the school.

#### *Retention, placement & post-graduate study*

The school must also provide information on

- Its retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.
- The placement of, and types of employment obtained by, graduates of the school's degree or certificate programs. Placement rate information may be gathered from state data systems, alumni or student satisfaction surveys, the school's placement rate for any program, if it calculates such a rate, or other relevant sources. If the school calculates a placement rate, it must disclose that rate.
- For any 4-year program at the school, the types of graduate and professional education in which its graduates enroll. This information may be gathered from state data systems, alumni or student satisfaction surveys, or other relevant sources.

In the case of placement information, and the types of graduate and professional education, the school must identify the source of the information, as well as any time frames and methodology associated with it.

**DISCLOSURES AND GAINFUL EMPLOYMENT PROGRAMS**

A school must disclose certain information about each of its gainful employment programs to prospective students—

- The occupations that the program prepares students to enter (by occupation name and SOC code), along with links to occupational profiles on the O\*NET website (see sidebar),
- The on-time graduation rate for students completing the program (see below),
- The tuition and fees the school charges a student for completing the program within normal time; the cost of room and board, if applicable; and the typical costs for books and supplies (unless those costs are included as part of tuition and fees),
- The job placement rate for students completing the program (see below),
- The median loan debt incurred by students who completed the program (separately by FSA loans, private educational loans, and institutional financing plans, as described below),
- Other information the Department provided to the school about the program.

Your school may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the cost information discussed earlier.

***Disseminating information about gainful employment programs***

The school must include the required information in promotional materials it makes available to prospective students and post the information on its websites—

- The information must be provided in a simple and meaningful manner on the home page of the school's program website, in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. (An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information.)
- Any other webpage containing general, academic, or admissions information about the program must provide a prominent and direct link to the single webpage that contains all the required information.

These disclosures must begin no later than July 1, 2011. A school must use an ED-developed disclosure form when that form is made available (see sidebar). Schools are responsible for meeting these disclosure requirements using their own form until the Department releases its form.

**Gainful employment programs**

"Gainful employment" refers to certain programs offered at public, private nonprofit, and proprietary institutions.

- All programs at for-profit schools except for programs leading to baccalaureate degree in liberal arts (proprietary institution)
- Any program at a public or nonprofit school that is not—
  - A program leading to a degree
  - A transfer program of at least two years

Source: GEN-11-10 (4/20/2011)

See detailed explanation in *Chapter 2*.

**CIP & SOC codes**

Classification of Instructional Programs (CIP) codes are developed by the U.S. Department of Education's National Center for Education Statistics.

The *Standard Occupational Classification* (SOC) codes are listed on the *Occupational Information Network* ([www.onetonline.org](http://www.onetonline.org)). You may identify the occupations for each of your programs by entering the program's full 6-digit CIP code on the O\*NET crosswalk ([www.onetonline.org/crosswalk](http://www.onetonline.org/crosswalk)).

If the crosswalk lists more than 10 related occupations for a program, your school may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program.

**ED-provided disclosure form via Web**

34 CFR 668.6(b)(2)(iv)

Schools will be required to use an ED-developed website to create their own webpages containing the required disclosure information for their gainful employment programs.

Your school will enter the data for each gainful employment program into the online form, resulting in an HTML file that the school will post to the website home page for that program. (The process is similar to the one used for ED's net price calculator template.)

Some of the information entered (such as the OPEID of the institution and CIP code for the program) will be used to look up and import data from Department databases for use in the output disclosure webpage. Additional program-level data will be entered by the school and included on the output page.

Access to the Web application and a more detailed description of the data elements required to be entered will be made available at a later date.



### Additional information on IFAP

The Gainful Employment page on IFAP includes links to Frequently Asked Questions, and resources such as electronic announcements, Webinars, and regulatory materials.

### Calculating the on-time graduation (completion) rate

668.6 \*\*\*

(c) *On-time completion rate.*

An institution calculates an on-time completion rate for each program subject to this section by—

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under §668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100.

### Median loan debt

As noted, your school must disclose the median loan debt incurred by students who completed the gainful employment program. In anticipation of the receipt of student-level information from schools (see Section 2.8.2) and to provide consistency among schools, these median amounts will be provided to the school by the Department for the school's disclosure to prospective students.

However, since the first disclosures under the new regulation must be made no later than July 1, 2011, and the first reporting by schools is not required until October 1, 2011, a school must include in its disclosures its own calculation of median debt—separately showing FSA debt and other educational debt—until such time as the Department provides that loan debt information.

The loan debt information disseminated by the school should be consistent with the information the school reports to the Department.

### Placement rates

The placement rates for students completing a gainful employment program are to be determined under a methodology developed by the National Center for Education Statistics (NCES) when that rate is available.

In the meantime, beginning on July 1, 2011, if the school is required by its accrediting agency or state to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or state agency under whose requirements the rate was calculated. If the accrediting agency or state requires a school to calculate a placement rate at the institutional level or other than a program basis, the school must use the accrediting agency or state methodology to calculate a placement rate for the program and disclose that rate.

## CAMPUS CRIME & SAFETY INFORMATION

A school must distribute campus security report to its students and employees on an annual basis. If the school maintains on-campus student housing, it must also disseminate an annual fire safety report.

The reports that are disseminated to the school community must include descriptions of the school's policies, procedures, and programs, as listed in the chart that follows.

Note that these reports must include the campus security and fire safety statistics reported to the Department each year (see *Chapter 8*).

### *Distributing security and fire safety reports to enrolled students & current employees*

By October 1 of each year, a school must distribute to all enrolled students and current employees its annual security report and fire safety reports, through appropriate publications and mailings, including—



- direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;
- a publication or publications provided directly to each individual; or
- posting on an Internet or Intranet website (see conditions for Web distribution at the beginning of this chapter).

The two reports can be published together or separately. If published together, the title of the document must clearly state that it contains both the Annual Security Report and the Annual Fire Safety Report. If published separately, each report must contain information on how to directly access the other report.

### *Dissemination of reports to prospective students & prospective employees*

For each of the reports, the school must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. A school must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee.

If the school chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet website, the school must follow the procedures for Web dissemination described earlier.

### **Clery/Campus Security Act**

In 1990, Congress enacted the *Crime Awareness and Campus Security Act* (Title II of Public Law 101-542), which amended the Higher Education Act of 1965. The act was amended in 1992, 1998, 2000, and 2008. The 1998 amendments renamed the law the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*.  
HEA Sec. 485(f)  
20 U.S.C. 1092(f)  
34 CFR 668.46

### **Crime & fire data on the Web**

The Department posts the campus crime statistics and fire safety statistics for participating schools on the Web at: <http://ope.ed.gov/security/>  
Crime statistics are also posted on the Department's College Navigator site: <http://nces.ed.gov/collegenavigator/>

## Sample statement of availability

Schools may use the following sample notice from the *Handbook for Campus Safety and Security Reporting* to inform students and employees of the availability of its Combined Annual Security Report and Annual Fire Safety Report:

CNO University is committed to assisting all members of the CNO community in providing for their own safety and security. The annual security and fire safety compliance document is available on the UPD website at [http://\\_\\_\\_\\_\\_.edu](http://_____.edu)

If you would like to receive the combined Annual Security and Fire Safety Report that contains this information, you can stop by the University Police Department at 2033 Canal Street, NW, Mercer Building, Washington, DC, 20052 or you can request that a copy be mailed to you by calling (XXX) XXX-XXXX.

The website and booklet contain information regarding campus security and personal safety including topics such as: crime prevention, fire safety, university police law enforcement authority, crime reporting policies, disciplinary procedures, and other matters of importance related to security and safety on campus. They also contain information about crime statistics for the three previous calendar years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by CNO; and on public property within, or immediately adjacent to and accessible from the campus.

This information is required by law and is provided by The CNO University Police Department.

## Required contents of annual campus security & fire safety reports

### **The Annual Security Report must include—**

- (1) The crime statistics submitted to the Department (see *Chapter 8*).
- (2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—
  - Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in *Chapter 8*;
  - Policies for preparing the annual disclosure of crime statistics; and
  - A list of the titles of each person or organization to whom students and employees should report criminal offenses for the purpose of making timely warning reports and the annual statistical disclosure. (See *Chapter 8* for a list of criminal offenses that must be reported).
  - This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.
- (3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
- (4) A statement of current policies concerning campus law enforcement that—
  - Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;
  - Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and
  - Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- (5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
- (6) A description of programs designed to inform students and employees about the prevention of crimes.
- (7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.
- (8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of state underage drinking laws.
- (9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of federal and state drug laws.
- (10) A description of any drug or alcohol-abuse education programs, as described in *Chapter 8*. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with the requirements in *Chapter 8*.
- (11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—
  - A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;
  - Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;
  - Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;
  - Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;
  - Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;
  - Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—
    - (A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
    - (B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (see *Chapter 7*). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and
  - Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.
- (12) A statement advising the campus community where law enforcement agency information provided by a state under 42 USC 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.
- (13) A description of the school's emergency response and evacuation procedures, as described in *Chapter 8*, including—
  - a list of the titles of those persons or organizations responsible for determining whether an emergency or dangerous situation exists and who are authorized to initiate the notification process.
  - a statement that the school will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.
- (14) A statement of the school's policy regarding missing student notification procedures, as described in *Chapter 8*.

***The Annual Fire Safety Report must include—***

- (1) The fire statistics submitted to the Department (see *Chapter 8*).
- (2) A description of each on-campus student housing facility fire safety system.
- (3) The number of fire drills held during the previous calendar year.
- (4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.
- (5) The institution's procedures for student housing evacuation in the case of a fire.
- (6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.
- (7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.
- (8) Plans for future improvements in fire safety, if determined necessary by the institution.

**INFORMATION ABOUT ATHLETICS*****Report on athletic program participation rates & financial support***

The Equity in Athletics Disclosure Act (EADA) requires a school that has an intercollegiate athletic program to make prospective students aware of its commitment to providing equitable athletic opportunities for its men and women students. The required contents of this report are described as a part of the reporting requirements in *Chapter 8*.

A school must publish its EADA report by October 15 and make it available upon request to students, prospective students, and the public in easily accessible places. For example, a school may make copies of the report physically available in intercollegiate athletic offices, admissions offices, or libraries, or by providing a copy to every student in his or her electronic mailbox.

A school must provide the report promptly to anyone who requests the information. For example, a school may not refuse to provide a copy of the report to the news media, and the school may not require an individual requesting the information to come to the school to view the report. A school may not charge a fee for the information.

***Providing completion & graduation rates for student athletes***

When a school offers a prospective student athlete athletically related student aid, it must provide the report on completion or graduation rates for student athletes to the prospective student and the student's parents, high school coach, and guidance counselor (see the sidebar exception).

**Equity in Athletics Disclosure Act (EADA)**

Equity in Athletics Disclosure Act (EADA) of 1994  
 HEA Section 485(e) and (g)  
 20 USC 1092  
 34 CFR 668.41(g)  
 34 CFR 668.47

**EADA data on the Web**

The Department posts the EADA reports for participating schools on the Web at:  
<http://ope.ed.gov/athletics/>

**Waiver of completion/graduation data calculation**

A school does not have to calculate and make available its completion or graduation rate (and, if applicable, transfer-out rate) if it is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data and ED has granted a waiver of the requirements to provide these rates to coaches and guidance counselors. To receive a waiver, your school or its athletic association or conference must submit a written application to ED that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

Even if the waiver is granted, your school must comply with the requirements of §668.41(d) (3) [upon request, providing its retention rate to a prospective student] and (f) [providing retention rates and completion or graduation rates for student athletes].

34 CFR 668.45(e)(1)

**Exception to providing completion/ graduation rates for student athletes**

A school does not have to provide a report on completion or graduation rates to the prospective student athlete and the athlete's parents, high school coach, and guidance counselor, if—

- (A) The institution is a member of a national collegiate athletic association,
  - (B) The association compiles data on behalf of its member institutions, which ED determines are substantially comparable to those required by §668.48(a), and
  - (C) The association distributes the compilation to all secondary schools in the United States.
- 34 CFR 668.41(f)

### Textbook information

The textbook information requirement was added by the Higher Education Opportunity Act of 2008, and took effect on July 1, 2010. The statutory requirement was described in GEN-08-12.

HEA section 133

Further guidance was given in DCL GEN-10-09. Also note that the law requires textbook publishers to provide information to faculty about pricing, copyright dates of previous editions, content revisions, alternate formats, etc.

## TEXTBOOK INFORMATION

To the maximum extent practicable, a school must post verified textbook pricing information for both required and recommended materials for each class on the schedule of classes that the school has posted online.

This pricing information must include the International Standard Book Number (ISBN) and retail price of the materials charged by the school or a bookstore on the campus or otherwise associated with the school. If the ISBN is not available, the pricing information must include the publisher and copyright date, as well as the title and author. If the school determines that disclosure of this pricing information is not practicable, it may substitute the designation “To Be Determined (TBD)” in lieu of the required pricing information.

If applicable, the school must include on its written course schedule a reference to the textbook information available on its Internet schedule and the Internet address for that schedule.

Schools are encouraged to provide information on renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs.

A school must provide the following information to its bookstore, if the college bookstore requests it:

- the school’s course schedule for the subsequent academic period; and
- for each course or class offered, the information it must include on its Internet course schedule for required and recommended textbooks and supplemental material, the number of students enrolled, and the maximum student enrollment.

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### Loan counseling in regulations

DL: 34 CFR 685.304

Perkins: 34 CFR 674.16(a)

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### DL Online Counseling

Students can take entrance and exit counseling online—

Entrance counseling  
StudentLoans.gov

Exit Counseling  
NSLDS.gov

Your school can sign up to receive regular reports with the names of students who have completed online counseling.

If your school documents that the student completed ED’s online counseling session, it has satisfied its responsibilities for electronic counseling.

## LOAN COUNSELING

### *Entrance counseling*

Before making the first disbursement of a loan to a Direct Subsidized or Unsubsidized Loan borrower, a school must ensure that the student has received entrance counseling or document that the student has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan. Similarly, a school must ensure that a graduate or professional student who is borrowing a Direct PLUS Loan has received entrance counseling, unless the student has received a prior Direct PLUS Loan or Federal PLUS Loan. There are similar counseling and disclosure requirements for Perkins loans (see *Volume 6*). (Note that loan counseling is not required for parent PLUS borrowers.)

### *Direct Loan counseling on the Web*

The Direct Loan Program offers both entrance and exit counseling on the Web (see sidebar). Your school may also elect to provide entrance counseling through an in-person session, or using a separate written form provided to the student that the student signs and returns to the school.

If your staff are conducting in-person counseling sessions, charts, handouts, audiovisual materials, and question-and-answer sessions can help convey the information in a more dynamic manner. We also recommend the use of written tests or interactive programs to ensure that the student understands the terms and conditions of his or her loans. Moreover, the regulations require (for any form of counseling) that someone with expertise in the FSA programs be available shortly after the counseling to answer borrowers' questions about those programs.

Regardless of the counseling methods your school uses—

- It must ensure that an individual with expertise in the FSA programs is reasonably available shortly after the counseling to answer the student's questions.
- It must document that the student received and understood entrance and exit counseling.

### *Providing borrower information at separation*

The personal and contact information collected at the time of exit counseling must be provided to the student's loan servicer within 60 days. A student authorizes his or her school to release information to lenders as part of the promissory note the student signs as part of the loan application process. No further permission is needed.

### *Exit counseling follow up*

If the student borrower drops out without notifying your school, you must confirm that the student has completed online counseling, or mail exit counseling material to the borrower at his or her last known address. It is also acceptable to email the information to the borrower at his or her home (not school) email address, if you have that address. Note that you may send the print or PDF version of the *Exit Counseling Guide for Federal Student Loan Borrowers* to satisfy the exit counseling requirement. The material must be mailed or emailed within 30 days of your learning that a borrower has withdrawn or failed to participate in an exit counseling session.

When mailing exit materials to a student who has left school, you're not required to use certified mail with a return receipt requested, but you must document in the student's file that the materials were sent. If the student fails to provide the updated contact information, you are not required to take any further action.

### *TEACH exit counseling*

Since TEACH Grants convert to loans if the service requirement is not completed, all grant recipients receive entrance counseling and subsequent counseling on the TEACH website before receiving their grant.

In addition, all recipients must receive TEACH Grant exit counseling, which is available on the NSLDS Student Access site ([www.nsls.ed.gov/nsls\\_SA/](http://www.nsls.ed.gov/nsls_SA/)). You will receive reports from NSLDS on all students who have

### **TEACH Grant Counseling**

Initial and subsequent counseling is delivered through the TEACH website before the student receives his or her grant.

Students complete exit counseling on the NSLDS Student Access site ([www.nsls.ed.gov/nsls\\_SA/](http://www.nsls.ed.gov/nsls_SA/)). It is the school's responsibility to see that TEACH recipients receive exit counseling when they are no longer enrolled in the program.

See NSLDS Newsletter #33 on the IFAP website (<http://ifap.ed.gov>) for more details on TEACH exit counseling and for information on related reporting tools on the NSLDS Professionals website ([www.nsls.ed.gov/nsls\\_FAP/](http://www.nsls.ed.gov/nsls_FAP/)).

### **Student PLUS borrowers**

Counseling requirements for graduate/professional PLUS borrowers were published November 1, 2007.  
34 CFR 685.304

### **Direct Loan counseling materials**

Direct Loan schools can order counseling materials, such as the Direct Loan Entrance Counseling Guide and the Direct Loan Exit Counseling Guide from the FSA PUBS Web site at [www.fsapubs.gov](http://www.fsapubs.gov)

### **Alternative entrance counseling approaches**

The Direct Loan regulations describe how a school may adopt alternative approaches as a part of its quality assurance plan—see 34 CFR 685.304(a)(8).

### **Providing borrower information**

A Direct Loan School should mail updated borrower information to the Direct Loan servicer to whom the loan has been assigned.



### **Providing additional information**

Your school can take additional steps to counsel its students in developing a budget, estimating their need for loans, and planning for repayment. You can reinforce these messages through continuing contacts with your student borrowers. You have an opportunity at each disbursement to remind students about the importance of academic progress, planning for future employment, and staying in touch with the holder of the loan. Additional ideas for loan counseling are given in the “Sample Default Management and Prevention Plan.”

**Financial literacy**—schools should provide borrowers with information concerning the income potential of occupations relevant to their course of study, counseling at various stages of enrollment, interactive tools to manage debt, repayment options, and school contact information. Schools can offer this information through a variety of media such as counseling, classes, publications, e-tutorials, electronic newsletters to email accounts, and adding the information to award letters.

**At-Risk Students**—schools should identify and provide special counseling for “at-risk” students (such as students who withdraw prematurely from their educational programs, borrowers who do not meet standards of satisfactory academic progress, or both). The most recent sample default plan was issued as an attachment to GEN-05-14 and is also available in the collection of “Default Rate Materials” on the IFAP website.

completed TEACH exit counseling. If the student doesn’t complete the exit counseling session on the NSLDS website, you must ensure that the counseling is provided either in person, through interactive electronic means, or by mailing written counseling materials (such as the PDF version of the exit counseling program on the NSLDS website) to the grant recipient’s last known address. In the case of unannounced withdrawals, you must provide this counseling within 30 days of learning that a grant recipient has withdrawn from school (or from a TEACH Grant-eligible program).

### ***Counseling for correspondence and study-abroad students***

If the student has enrolled in a study-abroad program (approved by a U.S. school for credit) or a correspondence or distance learning program, and has not previously received an FFEL or Direct Loan at that school, the school must document that the student has completed online entrance counseling that meets FSA requirements, or provide entrance counseling information by mail before releasing loan proceeds.

In the case of exit counseling for correspondence programs or study abroad programs, the school may mail or email the borrower written counseling materials within 30 days after the borrower completes the program, with a request that the borrower provide the contact and personal information that would ordinarily have been collected through the counseling process.



## DL Entrance Counseling—Required Elements

### **Entrance counseling for Direct Subsidized and Unsubsidized Loans** **34 CFR 685.304(a)(6)**

Entrance counseling for Direct Subsidized and Unsubsidized loan borrowers must:

- (i) Explain the use of a master promissory note (MPN);
- (ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;
- (iii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under federal law, and litigation;
- (iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;
- (v) Inform the student borrower of sample monthly repayment amounts based on—
  - (A) A range of student levels of indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans depending on the types of loans the borrower has obtained; or
  - (B) The average indebtedness of other borrowers in the same program at the same school as the borrower;
- (vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;
- (vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;
- (viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;
- (ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;
- (x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

- (xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records; and
- (xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

### **Entrance counseling for graduate or professional students (Direct PLUS Loan borrowers)** **34 CFR 685.304(a)(7)**

Entrance counseling for graduate or professional student Direct PLUS loan borrowers must:

- (i) Inform the student borrower of sample monthly repayment amounts based on—
  - (A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or
  - (B) The average indebtedness of other borrowers in the same program at the same school;
- (ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;
- (iii) For a graduate or professional student PLUS Loan borrower who has received a prior FFEL Stafford, or Direct Subsidized or Unsubsidized Loan, provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C),\* and
- (iv) For a graduate or professional student PLUS Loan borrower who has not received a prior FFEL Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(6)(i) through paragraph (a)(6)(xii) of this section. [See the entrance counseling requirements i-xii beginning in the first column of this page]

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\* §685.301(a)(3)(i) requires that the counseling provide the borrower with a comparison of—

- (A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;
- (B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan; and
- (C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment...

## DL Exit Counseling—Required Elements

### 34 CFR 685.304(b)(4)

Exit counseling must:

- (i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, student borrowers who have obtained only Direct PLUS Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;
- (ii) Review for the student borrower available repayment plan options including the standard repayment, extended repayment, graduated repayment, income contingent repayment plans, and income-based repayment plans, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments under each plan;
- (iii) Explain to the borrower the options to prepay each loan, to pay each loan on a shorter schedule, and to change repayment plans;
- (iv) Provide information on the effects of loan consolidation including, at a minimum—
  - (A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;
  - (B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;
  - (C) The options of the borrower to prepay the loan and to change repayment plans; and
  - (D) That borrower benefit programs may vary among different lenders;
- (v) Include debt-management strategies that are designed to facilitate repayment;
- (vi) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;
- (vii) Meet the requirements described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iv) of this section [see entrance counseling requirements (i), (ii), and (iv) in the first column of the previous page];
- (viii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

- (ix) Provide—
  - (A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or discharge of principal and interest, defer repayment of principal or interest, or be granted forbearance on a title IV loan; and
  - (B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;\*
- (x) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;
- (xi) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information;
- (xii) A general description of the types of tax benefits that may be available to borrowers; and
- (xiii) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and state of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

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\* Section 485 requires the Secretary (i.e., the Department) to provide "descriptions of federal student assistance programs including the rights and responsibilities of student and institutional participants," including "information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations" for their loans.

Section 485(d) also mentions information—

- to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles.
- concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service.
- on the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization.
- on state and other prepaid tuition programs and savings programs and disseminate such information to states, eligible institutions, students, and parents in departmental publications.

## DRUG AND ALCOHOL ABUSE PREVENTION

A school that participates in the FSA programs must provide information to its students, faculty, and employees to prevent drug and alcohol abuse. (A school is also required to have a drug and alcohol prevention program, as discussed in *Chapter 8*.)

In addition, a school that participates in the Campus-Based programs must have a drug-free awareness program for its employees that includes a notice to its employees of unlawful activities and the actions the school will take against an employee who violates these prohibitions.

### *Information to be included in drug prevention materials for students*

A school must provide the following in its materials:

- information on preventing drug and alcohol abuse;
- standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of drugs and alcohol by students and employees on the school's property, or as part of the school's activities;
- a description of the sanctions under local, state, and federal law for unlawful possession, use, or distribution of illicit drugs and alcohol;
- a description of any drug and alcohol counseling, treatment, or rehabilitation programs available to students and employees;
- a description of the health risks associated with the use of illicit drugs and alcohol; and
- a clear statement that the school will impose sanctions on students and employees for violations of the standards of conduct (consistent with local, state, and federal law) and a description of these sanctions, up to and including expulsion, termination of employment, and referral for prosecution.

### *Distribution of materials to all students and employees*

The school may include this information in publications such as student or employee handbooks, provided that these publications are distributed to each student and employee. Merely making drug prevention materials available to those who wish to take them is not sufficient. The school must use a method that will reach every student and employee, such as the method used to distribute grade reports or paychecks.

The school must distribute these materials annually. If new students enroll or new employees are hired after the initial distribution for the year, the school must make sure that they also receive the materials.

## Drug and alcohol prevention

Drug-Free Schools and Communities Act  
(Public Law 101-226)  
Drug-Free Workplace Act of 1988 (Public Law  
101-690)  
34 CFR 84 Government-Wide Requirements  
for Drug-Free Workplace  
34 CFR 86 Drug and Alcohol Abuse  
Prevention  
34 CFR 668.14(c)

## Notice of penalties

A school must provide to every student, upon enrollment, a separate, clear, and conspicuous written notice with information on the penalties associated with drug-related offenses (see *Volume 1* of this Handbook for a description of the penalties).  
Higher Education Act of 2008  
HEA section 485(k)

## Misrepresentation

34 CFR Subpart F  
34 CFR 668.71  
Misrepresenting educational program  
34 CFR 668.72  
Misrepresenting financial charges  
34 CFR 668.73  
Employability of graduates  
34 CFR 668.74  
Relationship with the Department of  
Education  
34 CFR 668.75

## Prospective student

Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

## Sanctions

If the Department determines that an eligible institution has engaged in substantial misrepresentation, it may—

- revoke the eligible institution's program participation agreement;
- impose limitations on the institution's participation in the FSA programs;
- deny participation applications made on behalf of the institution; or
- initiate a proceeding against the eligible institution under subpart G of 34 CFR 668.



## MISREPRESENTATION

A school is deemed to have engaged in *substantial misrepresentation* when the school itself, one of its representatives, or other related parties (see below), makes a substantial misrepresentation regarding the school, including about the nature of its educational program, its financial charges, or the employability of its graduates.



### Misrepresentation

*Misrepresentation* is defined as a false, erroneous or misleading statement made directly or indirectly to—

- a student, prospective student, or any member of the public, or
- an accrediting agency, a state agency, or the Department.

A *misleading statement* includes any statement that has the likelihood or tendency to deceive or confuse. A statement is any communication made in writing, visually, orally, or through other means.

This definition applies to statements made by—

- an eligible school
- one of its representatives, or
- any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services.

Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the school required the student to make such an endorsement or testimonial to participate in a program.

### Substantial misrepresentation

*Substantial misrepresentation* is defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

## Misrepresentation regulations

### 34 CFR 668.72 Nature of educational program

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

- (a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;
- (b)(1) Whether a student may transfer course credits earned at the institution to any other institution;
- (2) Conditions under which the institution will accept transfer credits earned at another institution;
- (c) Whether successful completion of a course of instruction qualifies a student—
  - (1) For acceptance to a labor union or similar organization; or
  - (2) To receive, to apply to take or to take the examination required to receive, a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;
- (d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;
- (e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—
  - (1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or
  - (2) Governmental officials for governmental employment;
- (f) Its size, location, facilities, or equipment;
- (g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;
- (h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;
- (i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- (j) The availability of part-time employment or other forms of financial assistance;
- (k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;
- (l) The nature or extent of any prerequisites established for enrollment in any course;
- (m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;
- (n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or
- (o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)



### 34 CFR 668.73 Nature of financial charges

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

- (a) Offers of scholarships to pay all or part of a course charge;
- (b) Whether a particular charge is the customary charge at the institution for a course;
- (c) The cost of the program and the institution's refund policy if the student does not complete the program;
- (d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or
- (e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

### 34 CFR 668.74 Employability of graduates

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

- (a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;
- (b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;
- (c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;
- (d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as "Men/women wanted to train for \* \* \*," "Help Wanted," "Employment," or "Business Opportunities";
- (e) Government job market statistics in relation to the potential placement of its graduates; or
- (f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)

### 34 CFR 668.75 Relationship with Department of Education

An eligible institution, its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement may not describe the eligible institution's participation in the title IV, HEA programs in a manner that suggests approval or endorsement by the U.S. Department of Education of the quality of its educational programs.

(Authority: 20 U.S.C. 1094)



## Private education loans

34 CFR 668.14(b)(28) and (29)  
 Requirements for preferred lender list:  
 34 CFR 682.212(h)  
 34 CFR 601.10  
 Self-certification form  
 34 CFR 601.11(d)  
 Information required to complete the self-certification form  
 34 CFR 668.14(b)(29)

## Truth in Lending Act

Truth in Lending Act section 128(e)(1)  
 15 USC 1638(e)(1)  
 Federal Reserve System Truth in Lending regulations (as published on August 14, 2009)  
 12 CFR 226.47 and 226.48.

## Private education loan definition

The definition of a private education loan given at the beginning of this section is based on the definition given in the Federal Reserve System regulations, which excludes some forms of credit—

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

12 CFR 226.46(b)(5)

Authority: 20 USC 1019

## INFORMATION ABOUT PRIVATE LOANS

A private education loan is a non-FSA loan that is made to a borrower expressly for postsecondary education expenses, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender. (See sidebar definition for exclusions.)

NEW

Private education loans made by schools include Public Health Service Loans, such as Health Professions Student Loans. However, Federal Perkins Loans are not considered to be private educational loans.

If a private education loan is part of a preferred lender arrangement, it is also subject to the rules for those arrangements (as described later in this section).

### Disclosures required for private education loans

A school or affiliated organization that provides information regarding a private education loan from a lender to a prospective borrower must provide the following disclosures, even if it does not participate in a preferred lender arrangement.

The private education loan disclosures must—

- provide the prospective borrower with the information required by 15 U.S.C. 1638(e)(1) [12 CFR 226.47(a) in the the Federal Reserve System regulations], and
- inform the prospective borrower that he or she may qualify for FSA loans or other assistance from the FSA programs, and that the terms and conditions of an FSA loan may be more favorable than the provisions of private education loans.

NEW

The school or affiliate must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding FSA loans.

The school must, upon the request of the applicant, discuss with the applicant the availability of federal, state, and institutional student financial aid.

### Self-certification form for private education loans

A lender must obtain a completed and signed self-certification form from the applicant before consummating a private education loan.

The loan applicant may obtain a copy of the self-certification form from the private lender and submit it to your school for completion or confirmation. A school may also, at its option, provide the information needed to complete the form directly to the lender.

NEW

If the applicant requests a copy of the self-certification form from your school, you must provide it.



If the student has been enrolled or admitted to the school, the student or parent loan applicant may request that the school complete section 2 before providing the form to the applicant. The school must comply with the applicant's request to the extent that the school possesses the required information. Section 2 of the self-certification form collects the following information—

The school must also provide the information required to complete the form, to the extent the school possesses such information, including—

- the applicant's cost of attendance (see *Volume 3, Chapter 2*);
- the applicant's estimated financial assistance (including, for students who have completed the FAFSA, the amounts of financial assistance used to replace the EFC, as determined by the school in accordance with the rules in *Volume 3, Chapter 9*); and
- the difference between the applicant's cost of attendance and estimated financial assistance, as applicable.

The school should not include any private education loans that it is making to an enrolled applicant when determining the amount of estimated financial assistance to report in section 2 of the self-certification form.

### *Schools as private lenders*

Note that if a school solicits, makes, or extends private education loans, it is considered to be a private educational lender that is subject to the Federal Reserve's regulations on private educational lenders.



When the school is the private education lender, it must complete and provide the Self-Certification form to the loan applicant, and subsequently obtain the signed form from the applicant before consummating the private education loan.

In some cases, a school may be making more than one private education loan to an applicant. For example, a school may be providing a loan funded by the school (or from donor-directed contributions) and a Public Health Service loan. In such cases, the school can provide one Self-Certification form to the applicant.

### *Preferred lender lists*

For any year in which the school has a preferred lender arrangement, it will at least annually compile, maintain, and make available for students attending the school, and the families of such students, a list in print or other medium, of the specific lenders for private education loans that the school recommends, promotes, or endorses in accordance with such preferred lender arrangement.

The school's preferred lender list must fully disclose—

- why it participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower, and

### **Self-certification form for private education loans**

Beginning February 14, 2010, schools must provide the Private Education Loan Applicant Self-certification form upon request from the loan applicant. A school may post an exact copy (pdf) of the self-certification form on its website for applicants to download, or it may provide a paper copy directly to an applicant. A copy of the self-certification form is included as an attachment to GEN 11-01.

The self-certification form must be printed by the school (or lender) with black ink on white paper. The typeface, point size, and general presentation of the form may not be changed from the version approved by OMB.

The only changes that may be made to the self-certification form are:

- Bold type in section headings may be removed, and bold or italic type may be added to the instructions.
- Schools and lenders may use any blank spaces at the top, bottom, or sides of the form for bar coding or other school/lender-specific information. (However, such space may not be used to include the student's or parent's Social Security number.)

Source: GEN-11-01



### **Public health service loans**

Loans made under Titles VII and VIII of the Public Health Service Act are considered to be private education loans, including—

- Health Professions Student Loan (HPSL)
- Primary Care Loan (PCL)
- Loans for Disadvantaged Students (LDS)
- Nursing Student Loan (NSL)

These loans are administered by the Health Resources and Services Administration ([www.hrsa.gov](http://www.hrsa.gov)).

### **Preferred lenders**

34 CFR 601.10

12 CFR 226.47

20 USC 1019a(a)(1)(A) and 1019b(c)

15 USC 1638(e)(11)

As enacted in—

HEA section 153(a)(2)(A)

Truth in Lending Act, section 128(e)(11)

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### Preferred lender lists

The school is required to

- exercise a duty of care and a duty of loyalty to compile the preferred lender list, without prejudice and for the sole benefit of the school's students and their families and
- not deny or otherwise impede the borrower's choice of a lender for those borrowers who choose a lender that is not included on the preferred lender list. (This requirement is also included in the school's Code of Conduct; see *Chapter 3*).

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### Use of school or lender name

34 CFR 612

20 USC 1019a(a)(2)–(a)(3)

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### Preferred lenders & code of conduct

Note that the code of conduct discussed in *Chapter 3* prohibits school staff from steering borrowers to particular lenders or delaying loan certifications.

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### Institution-affiliated organization definition

34 CFR 601.2

(1) Any organization that—

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization—

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

- that the students attending the school (or their families), do not have to borrow from a lender on the preferred lender list, and
- when available, the information identified on a model disclosure form (to be developed by the Department), for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families.

The preferred lender list must also prominently disclose the method and criteria used by the school in selecting lenders, to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

- payment of origination or other fees on behalf of the borrower,
- highly competitive interest rates, or other terms and conditions or provisions of FSA loans or private education loans,
- high-quality servicing for such loans, or
- additional benefits beyond the standard terms and conditions or provisions for such loans.

The preferred lender list must indicate, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list. If a lender is an affiliate of another lender on the preferred lender list, the listing must describe the details of this affiliation.

### Preferred lender disclosures

For each type of private education loan offered under a preferred lender arrangement, a school (or school-affiliated organization) must disclose—

- the maximum amount of FSA grant and loan aid available to students, in an easy-to-understand format,
- the Truth in Lending information [15 USC 1638(e)(11)], for each type of private education loan offered through a preferred lender arrangement to the school's students and their families, and
- when available, the information identified on a model disclosure form (to be developed by the Department), for each type of education loan that is offered through a preferred lender arrangement to the school's students or their families

The school must disseminate this information on its website and in all informational materials such as publications, mailings, or electronic messages or materials, that—

- are distributed to prospective or current students and their families, and
- describe financial aid that is available at an institution of higher education.

*Use of institution & lender name*

A school or school-affiliated organization that participates in a preferred lender arrangement regarding private education loans must not agree to the lender's use of its name, emblem, mascot, or logo in the marketing of private education loans to students attending the school in any way that implies that the loan is offered or made by the school or its affiliate instead of the lender. This prohibition also applies to other words, pictures, or symbols readily identified with the school or affiliate.

The school or its affiliate must also ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

**Preferred lender arrangement definition**

34 CFR 601.2(b)

(1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include—

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution or by an institution-affiliated organization of the covered institution, and the private education loan is—

(i) Funded by the covered institution's or institution-affiliated organization's own funds;

(ii) Funded by donor-directed contributions;

(iii) Made under title VII or title VIII of the Public Service Health Act; or

(iv) Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

**Private educational lender definition**

12 USC 1650

(A) a financial institution, as defined in section 1813 of title 12 that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 1752 of title 12 that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;



# Recordkeeping, Electronic Processes, & Privacy

*Schools must maintain detailed records to show that FSA funds are disbursed in the correct amounts to eligible students. These records must be made available to authorized parties in the course of audits, program reviews, or investigations. Personally identifiable information in these records may only be released to other parties under certain conditions specified in the FERPA regulations. Required information may be collected and stored electronically, subject to appropriate safeguards. Note that a school is also required to take steps to prevent the unauthorized distribution of copyrighted material on its network. You may wish to share the contents of this chapter with your school's IT office or provider.*

## REQUIRED RECORDS

A school must keep comprehensive, accurate program and fiscal records related to its use of FSA program funds. The importance of maintaining complete, accurate records cannot be overemphasized. Program and fiscal records must demonstrate the school is capable of meeting the administrative and fiscal requirements for participating in the FSA programs. In addition, records must demonstrate proper administration of FSA program funds and must show a clear audit trail for FSA program expenditures. For example, records for each FSA recipient must clearly show that the student was eligible for the funds received, and that the funds were disbursed in accordance with program regulations.

In addition to the general institutional recordkeeping requirements discussed here, a school must also comply with all program-specific recordkeeping requirements contained in the individual FSA regulations.

### **Records related to school eligibility**

A school must establish and maintain on a current basis any application the school submitted for FSA program funds. Other program records that must be maintained include:

- Program Participation Agreement, Approval Letter, and Eligibility and Certification Approval Report (ECAR),
- application portion of the FISAP,
- accrediting and licensing agency reviews, approvals, and reports,
- state agency reports,
- audit and program review reports,
- self-evaluation reports, and
- other records, as specified in regulation, that pertain to factors of financial responsibility and standards of administrative capability.

## CHAPTER 7 HIGHLIGHTS

- Required records
- Record retention periods
- Record Formats & Maintenance
- Examination of Records
- Privacy of Student Information (FERPA)
- E-Sign Act & Information Security
- Preventing Copyright Violations

## FSA Assessment module

To assess your compliance with the provisions of this chapter, see Activity 2 under "Fiscal Management" at

**[ifap.ed.gov/qa/home/qaassessments/fiscalmanagement.html](http://ifap.ed.gov/qa/home/qaassessments/fiscalmanagement.html)**

## Recordkeeping

34 CFR 668.24

## Closed-school records

If a school closes, stops providing educational programs, is terminated or suspended from the FSA programs, or undergoes a change in ownership that results in a change of control, it must provide for the retention of required records. It must also provide for access to those records for inspection and copying by the Department. A school that formerly participated in the FFEL Program must also provide access for the appropriate guaranty agency.

### **Retaining records for a branch that closes**

If a school has an additional location or branch that closes, the school should maintain its loan records beyond the end of the three-year record retention requirement in order to respond to the Department or to refute borrower claims of eligibility for discharge.

### ***Records relating to student eligibility***

A school must keep records that substantiate the eligibility of students for FSA funds, such as:

- cost of attendance information
- documentation of a student's satisfactory academic progress (SAP)
- documentation of student's program of study and the courses in which the student was enrolled
- data used to establish student's admission, enrollment status, and period of enrollment
- required student certification statements and supporting documentation
- documents used to verify applicant data, and resolve conflicting information
- documentation of all professional judgment decisions
- financial aid history information for transfer students

### ***Fiscal records***

A school must keep fiscal records to demonstrate its proper use of FSA funds. A school's fiscal records must provide a clear audit trail that shows that funds were received, managed, disbursed, and returned in accordance with federal requirements.

The fiscal records that a school must maintain include, but are not limited to:

- records of all FSA program transactions,
- bank statements for all accounts containing FSA funds,
- records of student accounts, including each student's institutional charges, cash payments, FSA payments, cash disbursements, refunds, returns, and overpayments required for each enrollment period,
- general ledger (control accounts) and related subsidiary ledgers that identify each FSA program transaction (FSA transactions must be separate from school's other financial transactions),
- Federal Work-Study payroll records, and
- FISOP portion of the FISAP.

A school must also maintain records that support data appearing on required reports, such as:

- Pell Grant statements of accounts,
- cash requests and quarterly or monthly reports from the G5 payment system,
- FSA program reconciliation reports,
- audit reports and school responses,
- state grant and scholarship award rosters and reports,
- accrediting and licensing agency reports, and
- records used to prepare the income grid on the FISAP.



## Record retention requirements

*From § 668.24 Record retention and examinations.*

### Program Records

A school must establish and maintain, on a current basis, any application for FSA funds and program records that document—

- the school's eligibility to participate in the FSA programs,
- the FSA eligibility of the school's programs of education,
- the school's administration of the FSA programs,
- the school's financial responsibility,
- information included in any application for FSA program funds, and
- the school's disbursement of FSA program funds.

### Fiscal records

A school must account for the receipt and expenditure of all FSA program funds in accordance with generally accepted accounting principles.

A school must establish and maintain on a current basis—

- financial records that reflect each FSA program transaction, and
- general ledger control accounts and related subsidiary accounts that identify each FSA program transaction and separate those transactions from all other school financial activity.

### Records for FSA recipients

A school must maintain records for each FSA recipient that include, but are not limited to—

- The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for FSA program funds
- Application data submitted to the Department, lender, or guaranty agency by the school on behalf of the student or parent
- Documentation of each student's or parent borrower's eligibility for FSA program funds (e.g., records that demonstrate that the student has a high school diploma, GED, or the ability to benefit)
- Documentation relating to each student's or parent borrower's receipt of FSA program funds, including but not limited to:
  - The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of grant, loan, or FWS award;
  - The date and amount of each disbursement of grant or loan funds, and the date and amount of each payment of FWS wages;
  - The amount, date, and basis of the school's calculation of any refunds/returns or overpayments due to or on behalf of the student; and
  - The payment of any refund/return or overpayment to the FSA program fund, a lender, or the Department, as appropriate.
- Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations
- Reports and forms used by the school in its participation in an FSA program, and any records needed to verify data that appear in those reports and forms
- Documentation supporting the school's calculation of its completion or graduation rates, and transfer-out rates (see *Chapter 6*).

### **Loan program records**

34 CFR 668.24, 682.610, and 685.309(c)

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### **Perkins & FWS records**

In addition:

- participants in the Perkins Loan Program must follow procedures in 34 CFR 674.19 for documenting the repayment history for each borrower for that program; and
- participants in the FWS Program must follow procedures established in Section 675.19 for documentation of work, earnings, and payroll transactions for the program.

(See *Volume 6—Campus-Based Programs*).

### **Loan program records**

There are special record keeping requirements in the Direct and FFEL loan programs. A school must maintain—

- A copy of paper or electronic loan certification or origination record, including the amount of the loan and the period of enrollment.
- The cost of attendance, estimated financial assistance, and expected family contribution used to calculate the loan amount (and any other information that may be required to determine the borrower's eligibility, such as the student's Federal Pell Grant eligibility or ineligibility).
- The date(s) the school disbursed the loan funds to the student (or to the parent borrower), and the amount(s) disbursed. (For loans delivered to the school by check, the date the school endorsed each loan check, if required.)
- Documentation of the confirmation process for each academic year in which the school uses the multi-year feature of the Master Promissory Note. This may be part of the borrower's file, but acceptable documentation can also include a statement of the confirmation process that was printed in a student handbook or other financial aid publication for that school year. The documentation may be kept in paper or electronic form. There is no retention limit for this documentation; you must keep it indefinitely because it may affect the enforceability of loans.

A school must keep records relating to a student or parent borrower's eligibility and participation in the Direct Loan or FFEL program for three years after the end of the award year in which the student last attended the school. A school must keep all other records relating to the school's participation in the Direct Loan or FFEL program for at least three years after the end of the award year in which the records are submitted.

RECORD RETENTION PERIODS

Schools must retain all required records for a minimum of three years from the end of the award year. However, the starting point for the three-year period is not the same for all records. For example, FFEL/DL reports must be kept for 3 years after the end of the award year in which they were submitted, while borrower records must be kept for 3 years from the end of the award year in which the student last attended.

Different retention periods are necessary to ensure enforcement and repayment of Perkins loans, which are normally held by the school. Perkins Loan repayment records, including cancellation and deferment records, must be kept for three years from the date that the loan was assigned to the Department, cancelled, or repaid. Perkins original promissory notes and original repayment schedules must be kept until the loan is satisfied or needed to enforce the obligation (for more information, see *Volume 6—Campus-Based Programs*).

A school may retain records longer than the minimum period required. Moreover, a school may be required to retain records involved in any loan, claim, or expenditure questioned in any FSA program review, audit, investigation, or other review, for more than three years (see *Chapter 9* for information on program reviews and audits). If the three-year retention period expires before the issue in question is resolved, the school must continue to retain all records until resolution is reached.

There are also additional record retention requirements that apply to schools granted waivers of the audit submission requirements.

Records

34 CFR 668.24 and 27

Retaining FISAP records

Schools participating in the Campus-based programs must keep the Fiscal Operations Report and Application to Participate (FISAP) and any records necessary to support their data (e.g., the source data for the income grid) for 3 years from the end of the award year in which the FISAP is submitted.

For instance, records for a FISAP submitted during the 2011–12 award year must be kept until at least June 30, 2015, three years from the last day of the award year.

Minimum record retention periods

**Pell and TEACH grants,  
Campus-Based Programs** .....3 years from the end of the award year for which the aid was awarded

*Except:*

- Fiscal Operations Report (FISAP) and supporting records .....3 years from the end of the award year in which the report was submitted
- Perkins repayment records\* .....until the loan is satisfied, or the documents are needed to enforce the obligation
- Perkins original promissory notes\* .....3 years from the date the loan is assigned to ED, canceled, or repaid

**Direct Loans & FFEL**

- Records related to borrower's eligibility and participation .....3 years from the end of the award year in which the student last attended
- All other records, including any other reports or forms .....3 years from the end of the award year in which the report was submitted

\* after 12/87, includes original repayment schedule, though manner of retention remains same as promissory note

\*\* before 12/87, included original repayment schedule

### New media formats

The requirement providing for other media formats acceptable to the Department allows for the use of new technology as it is developed. The Department will notify schools of acceptable media formats; schools should not apply for approval of a media format.

### Requirements for electronic promissory notes

34 CFR 668.24(d)(3)(i) through (iv)

## RECORD MAINTENANCE

### Acceptable formats

A school must maintain all required records in a systematically organized manner. Unless a specific format is required, a school may keep required records in:

- hard copy
- microform
- computer file
- optical disk
- CD-ROM
- other media formats

Record retention requirements for the Institutional Student Information Record (ISIR) are discussed below. All other record information, regardless of the format used, must be retrievable in a coherent hard copy format (for example, an easily understandable printout of a computer file) or in a media format acceptable to the Department.

Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format. This includes tax returns, verification statements, and Student Aid Reports (SARs) used to determine eligibility, and any other document when a signature, seal, etc., contained on it is necessary for the document to be used for the purposes for which it is being retained.

A school may maintain a record in an imaged media format only if the format is capable of reproducing an accurate, legible, and complete copy of the original document. When printed, the copy must be approximately the same size as the original document.

Please note that promissory notes that are signed electronically must be stored electronically and the promissory note must be retrievable in a coherent format.

### Special requirements for SARs and ISIRs

Special maintenance and availability requirements apply for SARs and ISIRs used to determine eligibility. It is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format for program review and audit purposes.

Because the SAR is a hard copy document, it must be maintained and available in its original hard copy format or in an imaged media format. The ISIR, an electronic record, must be maintained and available in its original format (*e.g.*, as it was archived using EDEExpress software supplied to the school). A school that uses EDEExpress has the ability to preserve the ISIR data that it has maintained during the applicable award year by archiving the data to a disk or other computer format.

## EXAMINATION OF RECORDS

### **Location**

A school must make its records available to the Department at a location of the school designated by the Department. These records must be readily available for review, including any records of transactions between a school and the financial institution where the school deposits any FSA funds.

A school is not required to maintain records in any specific location. For example, it may be more appropriate for a school to maintain some records in the financial aid office while maintaining others in the business office, the admissions office, or the office of the registrar. The responsible administrator in the office maintaining the records should be aware of all applicable record retention requirements.

### **Cooperation with agency representatives**

A school that participates in any FSA program, and the school's third-party servicers, if any, must cooperate with the agencies and individuals involved in conducting any audit, program review, investigation, or other review authorized by law (see sidebar).

A school must cooperate by providing—

- timely access to requested records, pertinent books, documents, papers, or computer programs for examination and copying by any of the agents listed above. The records to which timely access must be provided include, but are not limited to, computerized records and records reflecting transactions with any financial institution with which the school or servicer deposits or has deposited any FSA program funds.
- reasonable access to all personnel associated with the school's or servicer's administration of the FSA programs so that any of the agents listed above may obtain relevant information. A school or servicer must allow those personnel to supply all relevant information and allow those personnel to be interviewed without the presence of the school's or servicer's management (or tape-recording of the interviews by the school or servicer).

If requested by the Department, a school or servicer must provide promptly any information the school or servicer has regarding the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of FSA program funds who attends or attended the school. A school must also provide this information, upon request, to a lender or guaranty agency in the case of a borrower under the FFEL Program.

### **Cooperation with agency representatives**

Cooperation must be extended to the following individuals and their authorized representatives:

- an independent auditor,
- the Secretary of the Department of Education,
- the Department's Inspector General, and
- the Comptroller General of the United States.

See *Chapter 4* for more information on independent audits, and *Chapter 9* for information on program reviews.

A school must also provide this cooperation to any guaranty agency in whose program the school participates, and to the school's accrediting agency.

## FERPA scope

The relevant law is the *Family Educational Rights and Privacy Act of 1974*. Do not confuse FERPA with the Privacy Act of 1974 that governs the records kept by government agencies, including the application records in the federal processing system.  
20 USC 1232g

## Resources for developing a FERPA policy

The Department has posted a model notification on the Family Policy Compliance Office website at  
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>

## FERPA citations

34 CFR 99.10–12 Right of parent/student to review records  
34 CFR 99.20–22 Right of parent/student to request amendment to records or hearing

## Additional FERPA disclosures to parents

A school may disclose information from a student's education records to parents in the case of a health or safety emergency that involves the student.

A school may let parents of students under the age of 21 know when the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.

A school official may share with parents information that is based on that official's personal knowledge or observation and that is not based on information contained in an education record.

## PRIVACY OF STUDENT INFORMATION (FERPA)

The Family Educational Rights and Privacy Act (FERPA) sets limits on the disclosure of personally identifiable information from school records and defines the rights of the student to review the records and request a change to the records.

With exceptions such as those noted in this section, FERPA generally gives postsecondary students the right

- to review their education records,
- to seek to amend inaccurate information in their records, and
- to provide consent for the disclosure of their records.

These rules apply to all education records the school keeps, including admissions records (only if the student was admitted) and academic records as well as any financial aid records pertaining to the student. Therefore, the financial aid office is not usually the office that develops the school's FERPA policy or the notification to students and parents, although it may have some input.

### *Student's & parents' rights to review educational records*

A school must provide a student with an opportunity to review his or her education records within 45 days of the receipt of a request. A school is required to provide the student with copies of education records, or make other arrangements to provide the student access to the records, if a failure to do so would effectively prevent the student from obtaining access to the records. While the school may not charge a fee for retrieving the records, it may charge a reasonable fee for providing copies of the records, provided that the fee would not prevent access to the records.

## FERPA responsibilities & student rights

A school is required to—

- ✓ annually notify students of their rights under FERPA;
- ✓ include in that notification the procedure for exercising their rights to inspect and review education records; and
- ✓ maintain a record in a student's file listing to whom personally identifiable information was disclosed and the legitimate interests the parties had in obtaining the information (does not apply to school officials with a legitimate educational interest or to directory information).

A student has the right to—

- ✓ inspect and review any education records pertaining to the student;
- ✓ request an amendment to his/her records; and
- ✓ consent to disclosure of personally identifiable information from education records, except when FERPA permits disclosure without consent.



While the rights under FERPA have transferred from a student's parents to the student when the student attends a postsecondary institution, FERPA does permit a school to disclose a student's education records to his or her parents if the student is a dependent student under IRS rules.

Note that the IRS definition of a dependent is quite different from that of a dependent student for FSA purposes. For IRS purposes, students are dependent if they are listed as dependents on their parent's income tax returns. (If the student is a dependent as defined by the IRS, disclosure may be made to either parent, regardless of which parent claims the student as a dependent.)

There are several other situations in which a school official may disclose information about the student to the student's parents, as noted in the sidebar.

### *Prior written consent to disclose the student's records*

Except under one of the special conditions described in this section, a student must provide written consent before an education agency or school may disclose personally identifiable information from the student's education records.

The written consent must—

- state the purpose of the disclosure,
- specify the records that may be disclosed,
- identify the party or class of parties to whom the disclosure may be made, and
- be signed and dated.

If the consent is given electronically, the consent form must—

- identify and authenticate a particular person as the source of the electronic consent, and
- indicate that person's approval of the information contained in the electronic consent.

The FERPA regulations include a list of exceptions where the school may disclose personally identifiable information from the student's file without prior written consent. Several of these allowable disclosures are of particular interest to the financial aid office, since they are likely to involve the release of financial aid records.

### *Disclosures to school officials*

Some of these disclosures may be made to officials at your school or another school who have a legitimate interest in the student's records. Typically, these might be admissions records, grades, or financial aid records. Disclosure may be made to:

- other school officials, including teachers, within the school whom the school has determined to have legitimate educational interests.
- to officials of another postsecondary school or school system where the student receives services or seeks to enroll.

### **Sole possession records**

Sole possession records are not included in the term "education record," and thus are not subject to FERPA. Sole possession records are kept in the sole possession of the maker of the record and are—

- used as a memory or reference tool,
- not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
- typically maintained by the school official unbeknownst to other individuals.

Records that contain information taken directly from a student or that are used to make decisions about the student are not sole possession records.

### **Campus security records**

Records created and maintained by a school's campus security unit for law enforcement purposes are exempt from the privacy restrictions of FERPA and can be shared with anyone.

A school may disclose information from "law enforcement unit records" to anyone—including parents or federal, state, or local law enforcement authorities—without the consent of the eligible student.

### **FERPA & crime records**

There are two different FERPA provisions concerning the release of records relating to a crime of violence. One concerns the release to the victim of any outcome involving an alleged crime of violence (34 CFR 34 CFR 99.31(a)(13)). A separate provision permits a school to disclose to anyone the final results of any disciplinary hearing against an alleged perpetrator of a crime of violence where that student was found in violation of the school's rules or policies with respect to such crime or offense (34 CFR 99.31(a)(14)).

### **Third-party housing records**

Whether the rent is paid to the third party by the school on behalf of the student or directly by the student, a student housing facility owned by a third party that has a contract with a school to provide housing for the school's students is considered "under the control" of the school. Therefore, records (maintained by either the third-party or the school) related to the students living in that housing are subject to FERPA.

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### FERPA citations

34 CFR 99.30 When prior consent is required to disclose information  
34 CFR 99.31 When prior consent is not required to disclose information  
34 CFR 99.32 Recordkeeping requirement  
34 CFR 99.33 Limitations on redisclosure  
34 CFR 99.34 Disclosure to other agencies/institutions  
34 CFR 99.35 Disclosure for federal/state program purposes

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### Subpoena citations

20 USC 1232g(b)(1)(J)(i) and (ii), (b)(2)(B)  
20 USC 1232g(b)(4)  
34 CFR 99.31(a)(9)  
34 CFR 99.32

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### Ex-parte orders & terrorism

“Terrorism” and “crimes of terrorism” are defined in 18 USC 2331 and 2332b(g)(5)(B).

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### Patriot Act Changes

A Dear Colleague Letter, issued April 12, 2002, on changes made to FERPA by the 2001 Patriot Act is posted in PDF at [www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf](http://www.ed.gov/policy/gen/guid/fpco/pdf/htterrorism.pdf).

ED’s Family Policy Compliance Office  
Website: <http://www2.ed.gov/policy/gen/guid/fpco/index.html>  
E-mail: FERPA@ED.Gov

If your school routinely discloses information to other schools where the student seeks to enroll, it should include this information in its annual privacy notification to students. If this information is not in the annual notice, the school must make a reasonable attempt to notify the student at the student’s last known address.

### *Disclosures to government agencies*

Disclosures may be made to authorized representatives of the U.S. Department of Education for audit, evaluation, and enforcement purposes. “Authorized representatives” includes employees of the Department—such as employees of the Office of Federal Student Aid, the Office of Postsecondary Education, the Office for Civil Rights, and the National Center for Education Statistics—as well as firms that are under contract to the Department to perform certain administrative functions or studies. In addition—

- Disclosure may be made if it is in connection with financial aid that the student has received or applied for. Such a disclosure may only be made if the student information is needed to determine the amount of the aid, the conditions for the aid, the student’s eligibility for the aid, or to enforce the terms or conditions of the aid.
- A school may release personally identifiable information on an F, J, or M nonimmigrant student to U.S. Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) in compliance with the Student Exchange Visitor Information System (SEVIS) program without violating FERPA.

### *Disclosures in response to subpoenas or court orders*

FERPA permits schools to disclose education records, without the student’s consent, in order to comply with a lawfully issued subpoena or court order.

In most cases, the school must make a reasonable effort to notify the student who is the subject of the subpoena or court order before complying, so that the student may seek protective action. However, the school does not have to notify the student if the court or issuing agency has prohibited such disclosure.

A school may also disclose information from education records, without the consent or knowledge of the student, to representatives of the U.S. Department of Justice in response to an *ex parte* order issued in connection with the investigation of crimes of terrorism.

### *Documenting the disclosure of information*

Except as noted in the sidebar, a school must keep a record of each request for access and each disclosure of personally identifiable student information to other parties. The record of the request and disclosure must identify the parties who requested the information and their legitimate interest in the information. This record must be maintained in the student’s file as long as the educational records themselves are kept.

For instance, if Department officials request student records in the course of a program review, the school must document in each student's file that the student's records were disclosed to representatives of the Department. The easiest way for the school to do this is to photocopy a statement to this effect and include it in each student's file. A statement such as the following would be appropriate for a review of the FSA programs conducted by a Department regional office.

These financial aid records were disclosed to representatives of the U.S. Department of Education, School Participation Team, Region \_\_, on (Month/Day/Year) to determine compliance with financial aid requirements, under 34 CFR Part 99.31(a)(4).

When redisclosure is anticipated, the additional parties to whom the information will be disclosed must be included in the record of the original disclosure. For instance, to continue the example for an FSA program review, the following statement might be added:

The School Eligibility Channel may make further disclosures of this information to the Department's Office of Inspector General, and to the U.S. Department of Justice, under 34 CFR 99.33(b). Schools should check with the program review staff to find out if any redisclosure is anticipated.

### Documentation of request not required

A school does not have to record instances where the request for access is made by:

- The parent or eligible student.
- A school official who has a legitimate educational interest.
- A party with written consent from the parent or eligible student.
- A party seeking directory information.
- Certain court orders or subpoenas.

## HIPPA (privacy of health records) and FERPA

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) sets standards to protect the confidentiality of health information.

However, the HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above.

Your school's Disability Services office normally obtains and maintains health records for each student who applies for services or waivers. So the receipt and maintenance of health records by student services units is well established.

**Note:** In most cases, a student receiving a waiver from a school's academic progress policy would also have applied for services from your school's Disability Services office. Since most financial aid offices are not used to handling medical records, you may find it more practical to have the Disability Services office maintain the record, and reference that record in your file in the financial aid office. (Of course, you will have to ensure that the record maintenance requirements are complied with.)

For more information on HIPPA, see the U.S. Department of Health & Human Services: [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/)  
HIPPA regulations are published as:  
45 CFR Parts 160, 162, and 164

## E-Sign Act

*The Electronic Signatures in Global and National Commerce Act (E-Sign Act)* was enacted on June 30, 2000. The E-Sign Act provides, in part, that a signature, contract, or other record relating to a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation.

## Disclosures via website

Subject to certain conditions, disclosure may be made through Internet or intranet sites. CFR 34 668.41(b) & (c)

## Voluntary Consent Required

Voluntary consent to participate in electronic transactions is required for all financial information provided or made available to student loan borrowers, and for all notices and authorizations to FSA recipients required under 34 CFR 668.165—Notices and Authorizations.

See *Volume 4* for more information on notices and authorizations for disbursements.

## Using electronic processes for notifications & authorizations

So long as there are no regulations specifically requiring that a notification or authorization be sent via U.S. mail, a school may provide notices or receive authorizations electronically. You may also use an electronic process to provide required notices and make disclosures by directing students to a secure website that contains the required notifications and disclosures.

For additional information on electronic transactions involving student loans, see Section 2 of *Standards for Electronic Signatures in Electronic Student Loan Transactions*, in GEN-01-06, May 2001.

## THE E-SIGN ACT & INFORMATION SECURITY

The E-Sign Act permits lenders, guaranty agencies, and schools to use electronic signatures and electronic records in place of traditional signatures and records that, under the HEA and underlying regulations, otherwise must be provided or maintained in hard-copy format.

The E-Sign Act provides specifically for the creation and retention of electronic records. Therefore, unless a statute or regulation specifically requires a school to provide or maintain a record or document on paper, your school may provide and maintain that record electronically. Similarly, unless a statute or regulation specifically requires schools to obtain a pen and paper signature, you may obtain the signature electronically as long as the electronic process complies with the E-Sign Act and all other applicable laws.

## Obtaining voluntary consent for electronic transactions

Before conducting electronic transactions to provide to a recipient of FSA funds, the recipient must affirmatively consent to the use of an electronic record. The recipient's consent must be voluntary and based on accurate information about the transactions to be completed.

The consent must be obtained in a manner that reasonably demonstrates that the individual is able to access the information to be provided in an electronic form. For example, if you are going to send financial information by email, you could send a request for consent to the recipient via email, require the recipient to respond in a like manner, and maintain a record of that response.

## Safeguarding confidential information in electronic processes

Any time a school uses an electronic process to record or transmit confidential information or obtain a student's confirmation, acknowledgment or approval, the school must adopt reasonable safeguards against possible fraud and abuse. Reasonable safeguards a school might take include:

- password protection,
- password changes at set intervals,
- access revocation for unsuccessful log-ins,
- user identification and entry-point tracking,
- random audit surveys, and
- security tests of the code access.

If you use an electronic process to provide notices, make disclosures and direct students to a secure website, you must provide direct individual notice each year to each student that you are going to do so. You may provide the required notice through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronically directly to an email address.

The annual individual notice must—

- identify the information required to be disclosed that year,
- provide the exact Inter- or intranet address where the information can be found,
- state that, upon request, individuals are entitled to a paper copy, and
- inform students how to request a paper copy.

### ***Establishing & maintaining an information security program***

The Federal Trade Commission has ruled that most colleges are subject to the provisions of the Financial Services Act's Security Provisions (also known as the Financial Services Modernization Act). In the regulation, the commission created a definition of financial institutions that includes most colleges on the basis of the financial relationships they have with students, donors, and others. Consequently, colleges must draft detailed policies for handling financial data covered by the law, such as parents' annual income, and must take steps to protect the data from falling into the wrong hands.

Financial institutions, including postsecondary institutions, are required to have adopted an information security program by May 23, 2003, under the FTC rule. For specific requirements, see the box on "FTC Standards for Safeguarding Customer Information" on the following pages.

Thus, while schools have maximum flexibility in choosing a system that provides for electronic requests for release of personally identifiable information, they must ensure that their systems provide adequate safeguards.

### **Information security requirements**

- Federal Trade Commission regulations: 16 CFR 313.3(n) and 16 CFR 314.1–5
- Financial Services Modernization Act of 1999 (also known as the Gramm-Leach-Bliley Act or GLB Act)  
Pub. L. No. 106-102  
Sections 501 and 505(b)(2)
- 15 USC 6801(b), 6805(b)(2)

### **Effective dates**

Your school was required to implement an information security program that meets these requirements no later than May 23, 2003.

The FTC regulations include a "grandfathering" provision for contracts made with nonaffiliated third parties to perform services for your school or functions on your school's behalf; this provision expired on May 24, 2004.

### **Reporting security breaches to students and ED**

Schools are strongly encouraged to inform their students and the Department of any breaches of security of student records and information. The Department considers any breach to the security of student records and information as a demonstration of a potential lack of administrative capability.



## FTC Standards for Safeguarding Customer Information

Postsecondary educational institutions participating in the FSA programs are subject to the information security requirements established by the Federal Trade Commission (FTC) for financial institutions.

### **Customer information that must be safeguarded**

These requirements apply to all customer information in your school's possession, regardless of whether such information pertains to students, parents, or other individuals with whom your school has a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

Customer information means any record containing nonpublic personal information (see definition) about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

*\* Definition of "nonpublic personal information": Personally identifiable financial information; and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.*

### **Establishing & maintaining an information security program**

As a financial institution covered under these information security requirements, your school must develop, implement, and maintain a comprehensive information security program.

*\* Definition of "information security program": the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.*

The information security program must be written in one or more readily accessible parts and contain administrative, technical, and physical safeguards that are appropriate to the size and complexity of the school, the nature and scope of its activities, and the sensitivity of any customer information at issue.

The safeguards shall be reasonably designed to achieve the following objectives:

- Insure the security and confidentiality of customer information,
- Protect against any anticipated threats or hazards to the security or integrity of such information, and
- Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

### **Required elements of an information security program**

*Designated coordinators.* Your school must designate an employee or employees to coordinate its information security program.

*Risk Assessment.* Your school must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.

At a minimum, the school's risk assessment should include consideration of risks in each relevant area of your operations, including:

- Employee training and management,
- Information systems, including network and software design, as well as information processing, storage, transmission, and disposal, and
- Detecting, preventing, and responding to attacks, intrusions, or other systems failures.

*Safeguards & Testing/Monitoring.* Your school must design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

*Evaluation & Adjustment.* Your school must evaluate and adjust its information security program in light of the results of the required testing and monitoring, as well as for any material changes to your operations or business arrangements or any other circumstances that it has reason to know may have a material impact on your school's information security program.

*Overseeing service providers.* A service provider is any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to your school. Your school must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue and require your service providers by contract to implement and maintain such safeguards.

### **Sources:**

*FTC regulations: 16 CFR 313.3(n) and 16 CFR 314.1–5*  
*Gramm-Leach-Bliley Act: Sections 501 and 505(b)(2)*  
*U.S. Code: 15 USC 6801(b), 6805(b)(2)*



## PREVENTING COPYRIGHT VIOLATIONS

A school must implement written plans to effectively combat the unauthorized distribution of copyrighted material by users of the school's network, without unduly interfering with educational and research use of the network.

These plans must include the use of one or more technology-based deterrents, and must include procedures for handling unauthorized distribution of copyrighted material (including disciplinary procedures). No particular technology measures are favored or required for inclusion in the school's plans, and each school retains the authority to determine its own plans, including those that prohibit content monitoring.

The school's plans must also include measures to educate its community about appropriate versus inappropriate use of copyrighted material, including the information described under the student consumer information rules in *Chapter 6*. These mechanisms may include any additional information and approaches that the school determines will contribute to the effectiveness of the plans. For instance, the school might include pertinent information in student handbooks, honor codes, and codes of conduct in addition to email and/or paper disclosures.

The school must have a written plan for the periodic review of the effectiveness of these measures, using relevant assessment criteria.

The school must, in consultation with its chief technology officer (or other designated officer)—

- periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material (and disseminate the results, as described in *Chapter 6*).
- offer legal alternatives for downloading or otherwise acquiring copyrighted material (to the extent practicable and as determined by the school).

The Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists that may be referenced for compliance with this provision.

### Copyright requirements

Program Participation Agreement

34 CFR 668.14(b)(30)

See *Chapter 6* for requirement to disseminate copyright policies.

### Examples of deterrents

Technology-based deterrents include bandwidth shaping, traffic monitoring, accepting and responding to Digital Millennium Copyright Act (DMCA) notices, and commercial products designed to reduce or block illegal file sharing.

GEN-10-08



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# Campus Safety, Reports, & Other Requirements

*This chapter discusses school requirements that are not directly related to student aid or academics, such as required policies and procedures for campus security and fire safety. It also discusses several types of reports that must be submitted to the Department and the requirement for the school to have programs to prevent drug and alcohol abuse. Note that several of these requirements are linked to the consumer and safety information requirements in Chapter 6.*

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## SAFETY REQUIREMENTS

### Crime log

A school that participates in the FSA programs and has a campus police or security department must maintain a written, easily understood daily crime log. The log must list, by the date the crime was reported, any crime that was reported to the campus police or security department that occurred

- on campus,
- on a noncampus building or property,
- on public property, or
- within the police or security department's patrol jurisdiction.

The crime log must include the nature, date, time, and general location of each crime and the disposition of the complaint, if known.

The school must make an entry or an addition to an entry to the log within two business days (Monday–Friday, except days when the school is closed) of the report of the information to the campus police or security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

A school may withhold one or more of the required pieces of information if there is clear and convincing evidence that the release of the information would—

- jeopardize an ongoing criminal investigation or the safety of an individual,
- cause a suspect to flee or evade detection, or
- result in the destruction of evidence.

However, the school must disclose any information withheld for any of these reasons once the adverse effect is no longer likely to occur.

The school must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The school must make any portion of the log older than 60 days available within two business days of a request for public inspection.

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### CHAPTER 8 HIGHLIGHTS

- Safety Requirements
- Reporting Campus Data to ED
- Information for Gainful Employment Programs
- Reporting Foreign Sources & Gifts
- Anti-lobbying Provisions
- Programs to Prevent Drug & Alcohol Abuse
- Voter Registration

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### Citations

34 CFR 668.46(f)  
Fire safety log  
34 CFR 668.49  
Missing persons  
34 CFR 668.46(h)  
Emergency response & evacuation  
34 CFR 668.46(g)

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### Reporting campus security and fire safety data to ED

Security and fire safety survey data is collected through the Department's Campus Crime and Security website (requires password and user ID):  
<https://surveys.ope.ed.gov/security/>

## Fire Safety

Fire safety requirements were added by the Higher Education Opportunity Act (HEOA) of 2008

HEA 485(i)

34 CFR 668.49

## Definitions

*On-campus student housing facility*—a dormitory or other residential facility for students that is located on a school's campus.

*Campus*—any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls.

## Missing persons procedures—private right of action

The requirements for a school to establish missing persons procedures do not provide a private right of action to any person to enforce a provision of the subsection or create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

HEOA section 488(g) HEA section 485(j)  
Effective date: August 14, 2008

## Policies on timely reporting of crimes

Schools must have policies that encourage complete timely reporting of all crimes to the campus police and appropriate law enforcement agencies.

## Fire safety

A school that has any on-campus student housing facility must maintain a written, easily understood log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

The school must:

- make an entry or an addition to an entry to the log within two business days of the receipt of the information,
- make the fire log for the most recent 60-day period open to public inspection during normal business hours, and
- make any portion of the log older than 60 days available within two business days of a request for public inspection.

A school must annually submit a copy of the fire safety statistics to the Department (see “Annual campus security and fire safety reports” in the next section) and include the fire safety statistics in its annual report to the campus community (see *Chapter 6*).

## Missing persons procedures

A school that provides on-campus student housing facility must establish a missing student notification policy and include a description of its policy in its Annual Security Report to the campus community (see *Chapter 6*). The notification policy must—

- include a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- require that any missing student report must be referred immediately to the school's police or campus security department (if the school doesn't have such a department, it must refer the report to the local law enforcement agency that has jurisdiction in the area); and
- include an option for each student to identify a contact person or persons whom the school shall notify within 24 hours of a determination (by the school's police or campus security department, or the local law enforcement agency) that the student is missing.

**NEW**

Students must be advised that—

- their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

- if they are under 18 years of age and not emancipated, the school must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and
- the school will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

When a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours, the school must within 24 hours notify

- the contact person (if the student has designated one), and
- the student's custodial parent or guardian (if the student is less than 18 years old and is not emancipated).

In all cases, the school must inform the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

### *Emergency response & evacuation*

A school must develop emergency response and evacuation procedures, and include a description of its procedures in its Annual Security Report to the campus community (see *Chapter 6*).

A school must develop procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.

At a minimum, schools must have procedures to—

- confirm that a significant emergency or dangerous situation (as described above) exists;
- determine the appropriate segment or segments of the campus community to receive a notification, the content of the notification; and to initiate the notification system;
- disseminate emergency information to the larger community; and
- test the emergency response and evacuation procedures on at least an annual basis, including announced or unannounced tests.

The school must compile a list of the titles of those persons or organizations responsible for determining whether an emergency or dangerous situation exists and who are authorized to initiate the notification process, and include this information in the annual report.

### **Publicizing procedures**

The school must publicize its emergency response and evacuation procedures in conjunction with at least one test per calendar year. The school must document each test with a description of the exercise, stating the date and time, and indicating whether it was announced or unannounced.

### **Definition of “test”**

Regularly scheduled drills, exercises, and appropriate followthrough activities, designed for assessment and evaluation of emergency plans and capabilities.

### **Crimes to be reported to campus community**

34 CFR 688.46(c)(1)

- (i) Criminal homicide:
  - (A) Murder and nonnegligent manslaughter.
  - (B) Negligent manslaughter.
- (ii) Sex offenses:
  - (A) Forcible sex offenses.
  - (B) Nonforcible sex offenses.
- (iii) Robbery.
- (iv) Aggravated assault.
- (v) Burglary.
- (vi) Motor vehicle theft.
- (vii) Arson.
- (viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.
- (B) Persons not included in paragraph (c)(1) (viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

34 CFR 688.46(c)(3)

An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:

- (i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.
- (ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.
- (iii) Any other crime involving bodily injury.

## Definitions

*Undergraduate students*—For purposes of §668.45 and 668.48 [completion and graduation rates for students and student athletes] only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate. 34 CFR 668.41(a)

*Certificate or degree-seeking student*—a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

## College Navigator site

Note that your school's graduation rates are displayed on the IPEDS College Navigator site. <http://nces.ed.gov/collegenavigator/>

## Optional calculations

In addition to calculating the completion or graduation rate as described, a school may, but is not required to—

- (1) Calculate a completion or graduation rate for students who transfer into the school;
- (2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and
- (3) Calculate a transfer-out rate, even if the school determines that its mission does not include providing substantial preparation for its students to enroll in another eligible school.

## Reporting rates to IPEDS

The graduation, completion, and transfer-out rates are reported through the Department's Integrated Postsecondary Education Data System (IPEDS) Web site. The IPEDS survey is conducted by the National Center for Education Statistics (NCES). Information on NCES and IPEDS is available at <http://www.nces.ed.gov/IPEDS>

Survey forms, instructions, FAQs, worksheets, and other information are posted at: [nces.ed.gov/ipeds/web2000/springdataitems.asp](http://nces.ed.gov/ipeds/web2000/springdataitems.asp)

Information can only be reported to this system by the school's designated "keyholder." Schools may change keyholders at any time during the year by contacting

Jan Plotczyk  
202-502-7459  
IPEDS Universe Coordinator  
Rm. 8122 1990  
K Street NW  
Washington DC 20006

In the event of an emergency or dangerous situation, a school must, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

## Timely warning & emergency notification

A school must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

- included in campus crime statistics, such as arson, robbery, burglary, motor vehicle theft, aggravated assault, criminal homicides, and sex offenses (see full listing in sidebar), or
- reported to local police agencies or to campus security authorities (as identified under the school's statement of current campus policies), and
- considered by the school to represent a threat to students and employees.

A school is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

If there is an immediate threat to the health or safety of students or employees occurring on campus, a school must follow its emergency notification procedures. A school that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the school must provide adequate follow-up information to the community as needed.

## REPORTING CAMPUS DATA TO ED

### Completion, graduation, & transfer rates (Student Right-to-Know)

Each year, a school must prepare the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students. Your school must report its completion or graduation rates every spring to the Department through the IPEDS website (see sidebar).

If the school's mission includes providing substantial preparation for students to enroll in another eligible school, it must also prepare the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students.

The annual rates are based on the 12-month period that ended August 31st of the prior year. The rates will track the outcomes for students for whom 150% of the normal time for completion or graduation has elapsed. Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs. (See the IPEDS instructions for further details on calculating the rate.)



***Completion, graduation & transfer-out rates for student-athletes***

Schools that participate in an FSA program and offer athletically related student aid must use the IPEDS Web survey to provide information on completion or graduation rates, transfer-out rates, if applicable, and other statistics for students who receive athletically related student aid.

The definition of athletically related student aid used here is the same definition that is also used for the Equity in Athletics Disclosure Act (EADA) disclosure requirements (as discussed in the next section). The definitions of certificate- or degree-seeking students, first-time undergraduate students, undergraduate students, and normal time are the same as those used for the calculation of completion or graduation and transfer-out rates for a school's general student body cohort (also discussed above).

In addition to the completion rates and transfer-out rates, schools must report

- the number of students, categorized by race and gender, who attended the school during the year prior to the submission of the report, and
- within each sport—the number of those attendees who received athletically related student aid, categorized by race and gender.

***Equity in Athletics (EADA) report***

Any coeducational institution of higher education that participates in an FSA program and has an intercollegiate athletic program must prepare an annual EADA report. Officially, it is *The Report on Athletic Program Participation Rates and Financial Support Data*. It is commonly referred to as the EADA Report.

A school must submit its Equity in Athletics report to the Department via the EADA Survey website annually, within 15 days of making it available to students, prospective students, and the public.

The school's EADA report must include information on—

- the number of male and female full-time undergraduate students that attended the school (undergraduate students are those who are consistently designated as such by the school),
- the total amount and ratio of athletically related student aid awarded to male athletes compared to female athletes,
- the expenses incurred by the school for men's and women's sports,
- total annual revenues for men's or women's sports,
- the annual school salary of non-volunteer head coaches and assistant coaches for men's and women's teams,
- for each varsity team in intercollegiate competition, the number and gender of participants and coaches, operating expenses, etc.

For specific categories and reporting rules, please see the EADA User's Guide for the online survey.

**Equity in Athletics Disclosure Act (EADA)**

Equity in Athletics Disclosure Act (EADA) of 1994  
HEA Section 485(e) and (g)  
20 USC 1092  
34 CFR 668.41(g)  
34 CFR 668.47

**Reporting EADA data to ED**

Schools report their EADA data on the Web at the Athletic Disclosure website:  
<http://surveys.ope.ed.gov/athletics>

Note that a password and user ID are required for use of this website. They are sent by the Department to the chief administrator at the school. For help with this site, contact:  
[eadahelp@westat.com](mailto:eadahelp@westat.com)

## Handbook for Campus Crime Reporting

To assist schools in fully complying with the Crime Awareness and Security Act of 1990, the Department has developed *The Handbook for Campus Safety and Security Reporting*. The handbook defines the categories of crime and procedures for reporting them, as well as the requirements for timely warnings and maintenance of a daily crime log. The Handbook is available at: [www.ed.gov/admins/lead/safety/campus.html](http://www.ed.gov/admins/lead/safety/campus.html)

## Reporting campus crime & fire safety information

Each year in the late summer, the Department sends a letter and a certificate to the school's president or chief executive officer. The certificate includes the User ID and password needed to access the Campus Safety and Security Survey website. <https://surveys.ope.ed.gov/security/>

## Reporting on gainful employment programs

34 CFR 668.6  
34 CFR 668.8(c)(3) and (d)  
GEN 11-10 (April 20, 2011)

Schools may use the NSLDS Professional Access website to report required gainful employment data to the U.S. Department of Education. Technical details are provided in the NSLDS Gainful Employment Users Guide.

While the regulations provide that the deadline for institutions to report GE Program information for the 2006–2007 through 2009–2010 award years is October 1, 2011, the August 2 Federal Register notice provides that the Department will continue to accept information from these earlier award years through November 15, 2011, the same date as the reporting date for the 2010–2011 award year.

See Gainful Employment Electronic Announcements #13, #14, #15, and #18 for more information on reporting Gainful Employment information through SAIG and NSLDS.

Continuing updates on this topic will be posted on the Gainful Employment Information Page on IFAP.

## Annual submission of campus security & fire safety statistics

A school must use the Campus Safety and Security Survey website to submit the crime statistics that are documented in the crime log described earlier in this chapter.

A school that maintains any on-campus student housing facility must also submit annual fire safety statistics to the Department. The report must include statistics on the number and causes of fires, as well as fire-related injuries, death, and property damage for each on-campus student housing facility during the three most recent calendar years for which data are available.

The fire safety statistics will be due at the same time as the crime statistics. Please visit the Campus Safety and Security Survey website for a detailed explanation of how campus crime and fire safety statistics are to be tabulated.

## INFORMATION FOR GAINFUL EMPLOYMENT PROGRAMS



Schools must report to the Department certain information about all of its students who enrolled in gainful employment programs, regardless of whether a student received FSA funds.

Schools will use the existing Enrollment Reporting Process to submit the gainful employment program information to the Department. This is the reporting system currently used by schools to submit enrollment information to the National Student Loan Data System (NSLDS).

The Enrollment Reporting data format will be modified to include the additional data items needed for gainful employment reporting. For information on the current process, see the October 2009 edition of the Enrollment Reporting Guide. Further information will be posted to the IFAP web site as it becomes available.

### Information to be reported to ED

The Department is still finalizing the complete list of data items that schools will report, but you can view the preliminary list attached to GEN 11-10.

The regulations list the following information to be reported for each student who enrolled in a gainful employment program during an award year—

- information needed to identify the student and the postsecondary institution the student attended; and
- if the student began attending a program during the award year, the name and the Classification of Instructional Program (CIP) code of that program.

However, you should not report students for whom your school does not have a Social Security Number (SSN).

If the student completed a program during the award year, you must also report—

- the name and CIP code of that program, and the date the student completed the program;
- the amounts the student received from private education loans and the amount from institutional financing plans that the student owes the institution upon completing the program; and
- whether the student matriculated to a higher credentialed program at the school or if available, evidence that the student transferred to a higher credentialed program at another school.

The school must report for each gainful employment program, by name and CIP code, the total number of students that are enrolled in the program at the end of each award year and identifying information for those students.

### *Time frame for reporting*

The first reports must be submitted to the Department no later than November 15, 2011, and must include information on students who were enrolled in a gainful employment program during the—

- 2007–08 through 2009–10 award years;
- the 2006–07 award year (to the extent that the information is available)

The Department will publish deadline dates in the Federal Register for information to be reported for subsequent award years.

For any award year, if the school is unable to provide all or some of the required information, it must provide an explanation of why the missing information is not available (see the box on the next page).

### **CIP codes**

CIP (Classification of Instructional Programs) codes are developed by the U.S. Department of Education's National Center for Education Statistics.

### **Gainful employment programs**

"Gainful employment" refers to certain programs offered at public, private nonprofit, and proprietary institutions:  
All programs at for-profit schools except for programs leading to a baccalaureate degree in liberal arts (proprietary institution);  
Any program at a public or nonprofit school that is not  
—a program leading to a degree, or  
—a transfer program of at least two years.

See a detailed explanation and examples of gainful employment programs in *Chapter 2*.  
Source: GEN-11-10 (4/20/2011)

### **Providing information to students**

A school must provide information to enrolled and prospective students on its gainful employment programs. See *Chapter 6*.

## Submitting Explanations of Missing or Incomplete Data

If your school is not able to report the required information about students who were enrolled in any of its gainful employment programs, it must provide an explanation of the reason(s) why the information cannot be reported.

The following is a list of circumstances that require such an explanation:

- The institution has no GE Programs.
- The GE Program was eligible for the FSA programs in the 2010–2011 award year, but was not eligible in one or more of the award years between 2006–2007 and 2010–2011.
- The institution is a foreign school and will not be reporting for a GE Program because there were fewer than 10 students enrolled in the program in the relevant award year. Note: Domestic institutions must report for all GE Programs, regardless of the number of students who were enrolled.
- The institution is unable to report for one or more of the required award years (2006–2007 through 2010–2011).
- The institution is unable to report for one or more of its GE Programs.
- The institution is unable to report for one or more of the students who were enrolled in a GE Program.
- The institution is unable to report all of the information required for each student who was enrolled in a GE Program in the required award years (2006–2007 through 2010–2011).
- Any other circumstance where the institution is unable to meet the regulatory reporting requirements by the established timelines for reporting.

### **How to submit explanations of missing or incomplete information**

The required explanation(s) of missing or incomplete GE Program information must be submitted by an institution in an e-mail sent to GE-Missing-Data@ed.gov.

- Subject Line of e-mail—To ensure a timely review of each explanation, we request that the “subject” line of the e-mail include the first 6 digits of the institution’s OPEID and the institution’s name. For example, if North South University’s six digit OPEID is “012345”, the subject line would read 012345–North South University.
- Body of e-mail—At the top of the body of the e-mail, please provide the name, phone number, and e-mail address of a contact person at the institution. This is the person we will contact if we have any questions on the missing or incomplete data explanation provided.
- Following the contact information, the e-mail should provide the explanation of why the information will not be provided or will be incomplete. Be certain to indicate the award year and the specific GE Program identifiers (the institution’s name of the GE Program and the GE Program’s six-digit CIP code and its two-digit credential level code). (See NSLDS User’s Guide, page 45). For example, “We are unable to submit data for the ABC Program 191234-01 for the 2006–2007 Award Year because . . .”

Please do not attach any documents to the e-mail. Upon review of the explanation, Department staff will be contact the institution if additional information is needed.

### **Data that must be excluded from the email**

The e-mail message to GE-Missing-Data@ed.gov must not include the following:

- Students’ personally identifiable information—(e.g., Name, Social Security Number or other identifying number, or Date of Birth)
- File attachments (e.g., a Word or PDF document or Excel spreadsheet)
- Questions about gainful employment regulations or policy. If the institution has questions about gainful employment requirements, please send an e-mail to ge-questions@ed.gov.
- Technical questions about gainful employment reporting. If the institution has technical questions about using the National Student Loan Data System to report gainful employment information, please send an e-mail to nsldsge@ed.gov.

### **Deadline for submitting explanations of missing/incomplete data**

Consistent with the regulatory reporting dates, institutions must submit any missing or incomplete information explanations no later than October 1, 2011.

Important Note: GE Electronic Announcement #15 explained that the Department will continue to accept GE Program information from institutions through November 15, 2011. However, as noted above, explanations of missing or incomplete GE Program information must be submitted by October 1, 2011.

### **Acknowledgement from ED**

An auto-response message will be returned acknowledging receipt of the e-mail. This auto-response e-mail is not an approval. Submissions will be evaluated and institutions will either be asked for additional information or will receive an approval or denial of the explanation. This e-mail will be directed to the person identified in the email as the contact person.

## REPORTING INFORMATION ON FOREIGN SOURCES & GIFTS

Federal law requires most 2-year and 4-year postsecondary schools (whether or not the school is eligible to participate in the FSA programs) to report

- ownership or control by foreign sources.
- contracts with or gifts from the same foreign source that, alone or combined, have a value of \$250,000 or more for a calendar year.

### *Who must report*

A school (and each campus of a multicampus school) must report this information if the school—

- is legally authorized to provide a program beyond the secondary level within a state,
- provides a program that awards a bachelor's degree or a more advanced degree, or provides at least a two-year program acceptable for full credit toward a bachelor's degree,
- is accredited by a nationally recognized accrediting agency, and
- is extended any federal financial assistance (directly or indirectly through another entity or person) or receives support from the extension of any federal financial assistance to the school's subunits.

### *Timing and content of submission*

A school must report this information by January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control. The January 31 report should cover the period July 1–December 31 of the previous year, and the July 31 report should cover January 1–June 30 of the same year.

### *Information to be reported*

Using the E-App, you must report the following information in Section K, question 71:

- for gifts received from or contracts entered into with a foreign government, the name of the country and the aggregate amount of all gifts and contracts received from each foreign government;
- for gifts received from or contracts entered into with a foreign source other than a foreign government, the name of the foreign state to which the contracts or gifts are attributable and the aggregate dollar amount of the gifts and contracts attributable to a particular country (The country to which a gift or a contract is attributable is the country of citizenship or, if unknown, the principal residence for a foreign source who is a natural person and the country of incorporation or, if unknown, the principal place of business for a foreign source that is a legal entity.);
- in the case of a school that is owned or controlled by a foreign entity—the identity of the foreign entity, the date on which the

### **Where to report foreign gift information**

Foreign gift, contract, and ownership or control reports must be submitted to the FSA School Participation Teams using FSA's electronic application (E-App) found at [www.eligcert.ed.gov](http://www.eligcert.ed.gov).

Go to Section K, Question 71, and enter the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L to complete the signature page. You may then submit your report.

### **Foreign gifts references**

Higher Education Act: Sec. 117

Reminder to schools of requirements for reporting foreign gifts.

DCL GEN-04-11, Oct. 4, 2004.

### **Definitions**

*A foreign source is*

- a foreign government, including an agency of a foreign government;
- a legal entity created solely under the laws of a foreign state or states;
- an individual who is not a citizen or national of the United States; and
- an agent acting on behalf of a foreign source.

*A gift is any gift of money or property.*

*A contract is any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.*

### **Restricted or conditional gift or contract**

*A restricted or conditional gift or contract is*

- any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding
- the employment, assignment, or termination of faculty;
- the establishment of departments, centers, research or lecture programs, or new faculty positions;
- the selection or admission of students; or
- the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

## Penalties

If a school fails to comply with the requirements of this law in a timely manner, the Department is authorized to undertake a civil action in federal district court to ensure compliance. Following a knowing or willful failure to comply, a school must reimburse the Treasury of the United States for the full costs of obtaining compliance with the law.

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## For additional information & alternative reporting

Contact the School Participation Team for your state. Contact information for these teams is on the IFAP website (<http://ifap.ed.gov>), under "Help—Contact Information."

foreign entity assumed ownership or control, and a description of any substantive changes to previously reported ownership or control, or institutional program or structure resulting from the change in ownership or control,

- for restricted or conditional gifts received from, or restricted or conditional contracts entered into with a foreign government—the name of the foreign country, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions or restrictions,
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign person—the citizenship (or if unknown, the principal residence) of that person, the amount of the gift or contract, the date of the gift or contract, and a description of the conditions and restrictions, and
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign source (legal entity other than a foreign state or individual—the country of incorporation or, if unknown, the principal place of business for that foreign entity), the amount of the gift or contract, date of the gift or contract, and a description of the conditions and restrictions.

Any conditions or restrictions on the foreign gift must be reported in question 69.

Once you've entered the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L to complete the signature page. You may then submit your report.

### *Alternative reporting*

In lieu of the reporting requirements listed above:

- If a school is in a state that has substantially similar laws for public disclosure of gifts from, or contracts with, a foreign source, a copy of the report to the state may be filed with the Department. The school must provide the Department with a statement from the appropriate state official indicating that the school has met the state requirements.
- If another department, agency, or bureau of the executive branch of the federal government has substantially similar requirements for public disclosure of gifts from, or contracts with, a foreign source, the school may submit a copy of this report to the Department.

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## Prohibition on use of FSA funds

HEOA 2008 section 119  
(no corresponding HEA section)  
Effective date: August 14, 2008

## ANTI-LOBBYING PROVISIONS

### *Prohibition on use of FSA funds*

FSA funds may not be used to pay any person for trying to influence

- a member of Congress or an employee of a member of Congress, or
- an officer or employee of Congress or any agency.



This prohibition applies to the making of a federal grant or loan, awarding federal contracts, and entering into federal cooperative agreements, as well as to the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.

In addition, FSA funds may not be used to hire a registered lobbyist or to pay any person or entity for securing an earmark. Schools receiving FSA funds will have to certify their compliance with these requirements annually.

### *Campus-based disclosure*

If a school that receives more than \$100,000 in Campus-Based funds has used *nonfederal* funds to pay any person for lobbying activities in connection with the Campus-Based programs, the school must submit a Disclosure Form (Standard Form LLL) to the Department. The school must update this disclosure at least quarterly and when changes occur.

The disclosure form must be signed by the Chief Executive Officer (CEO) or other individual who has the authority to sign on behalf of the entire school. A school is advised to retain a copy in its files.

The school must require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

## PROGRAMS TO PREVENT DRUG & ALCOHOL ABUSE

Every school that participates in the FSA programs must have a drug and alcohol prevention program for its students and staff, as described below. A school that receives Campus-Based funding must also have a drug prevention program for its employees.

### *Drug & alcohol abuse prevention program*

Every participating school must certify that on the date it signs the Program Participation Agreement, it has a drug and alcohol abuse prevention program in operation that is accessible to any officer, employee, or student at the school. The program adopted by the school must include an annual distribution to all students, faculty, and staff of information concerning drug and alcohol abuse and the school's prevention program.

A school must review its program once every two years to determine its effectiveness and to ensure that its sanctions are being enforced. As a part of this biennial review, the school must determine—

- the number of drug and alcohol-related violations and fatalities that occur on a school's campus, or as part of any of the school's activities and are reported to campus officials; and
- the number and type of sanctions that are imposed by the school as a result of drug and alcohol-related violations and fatalities on the school's campus or as part of any of the school's activities.



If a school does not certify that it has a prevention program or fails to carry out a prevention program, the Department may terminate any or

## Anti-Lobbying Certification & Disclosure

Section 319 of Pub. L. 101-121, enacted October 23, 1989, amended title 31, United States Code, by adding a new section 1352, entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," commonly known as the Byrd Anti-Lobbying Amendment.

As a result of that legislation, the Office of Management and Budget (OMB) issued interim final common regulations on February 26, 1990, for implementing and complying with the law. See 34 CFR Part 82.

## ACA may not be used for association membership

A school may not use its Administrative Cost Allowance to pay for its membership in professional associations (such as the National Association of Student Financial Aid Administrators, the National Association of College and University Business Officers, etc.), regardless of whether the association engages in lobbying activities.

## Drug & alcohol abuse prevention programs

These requirements are found in 34 CFR 86—Drug and Alcohol Abuse Prevention. The regulations published in the *Federal Register*, August 16, 1990, offer a number of suggestions for developing a drug prevention program.

## Consequences of noncompliance

The regulatory provisions for termination of federal aid to the school and repayment of federal funds received are found in 34 CFR 86.301.

## Measuring the effectiveness of prevention programs

The effectiveness of a school's prevention program may be measured by tracking the number of drug & alcohol-related

- disciplinary actions,
- treatment referrals, and
- incidents recorded by campus police or other law enforcement officials.

You may also find it useful to track the number of students or employees attending self-help or other counseling groups related to alcohol or drug abuse; and survey student, faculty, and employee attitudes and perceptions about the drug and alcohol problem on campus.

## Drug-Free Workplace

The FSA requirements are derived from the 1989 Amendments to the Drug-Free Schools and Communities Acts of 1986 and 1988. See Public Law 101-226.

Because a school applies for and receives its Campus-Based allocation directly from the Department, the school is considered to be a federal grant recipient and as such is required to make a good faith effort on a continuing basis to maintain a drug-free workplace.

34 CFR Part 84

Also see the Drug-Free Workplace Act of 1988 (Public Law 101-690)

## Additional sources of information

The following resources are available for schools that are developing prevention programs.

- The Drug Free Workplace Helpline—Provides information to private entities about workplace programs and drug testing. Proprietary and private nonprofit schools may use this line (1-800-967-5752). <http://www.workplace.samhsa.gov/>
- Substance Abuse & Mental Health Services Administration—SAMHSA (U.S. Department of Health & Human Services) Treatment and Referral Hotline 1-800-662-HELP (1-800-662-4357) Publications: <http://store.samhsa.gov/home>

## Applicability of voter registration requirement

The voter registration requirement was included in the National Voter Registration Act of 1993. In essence, if a participating school is located in a state that requires voter registration prior to election day and/or does not allow the ability to register at the time of voting, then the school must make a good faith effort to distribute voter registration forms to its students.

The Department of Justice has identified the states that meet this criteria—The requirements of the National Voter Registration Act of 1993 (also known as the “NVRA” or “motor voter law”) apply to 44 States and the District of Columbia. Six States (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming are exempt from the NVRA. . . . Likewise, the territories are not covered by the NVRA (Puerto Rico, Guam, Virgin Islands, American Samoa).

—From U.S. Department of Justice, “Questions and Answers” on “The Voter Registration Requirements of Sections 5, 6, 7 and 8 of the National Voter Registration Act.”

all forms of federal financial assistance to the school and may require the school to repay any or all federal financial aid that it received while not in compliance.

## Drug-Free Workplace requirements for Campus-Based schools

A school that participates in the Campus-Based programs must take certain steps to provide a drug-free workplace, including—

- establishing a drug-free awareness program to provide information to employees,
- distributing a notice to its employees of prohibited unlawful activities and the school’s planned actions against an employee who violates these prohibitions, and
- notifying the Department and taking appropriate action when it learns of an employee’s conviction under any criminal drug statute.

A school’s administrative cost allowance may be used to help defray related expenses, such as the cost of printing informational materials given to employees. The administrative cost allowance is discussed in *Volume 6: Campus-Based Programs*.

The drug-free workplace requirements apply to all offices and departments of a school that receives Campus-Based funds. Organizations that contract with the school are considered subgrantees not subject to the requirements of the Drug-Free Workplace Act.

## VOTER REGISTRATION

Schools in most states and the District of Columbia must make a good faith effort to distribute voter registration forms to their students. (Schools in Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming are exempt from this requirement.) The school must make the voter registration forms widely available to its students. It must individually distribute the forms to its degree- or certificate-seeking (FSA-eligible) students.

The school can mail paper copies, or, alternatively, it may distribute voter registration forms by electronically transmitting to each student a message containing an acceptable voter registration form or an Internet address where that form can be downloaded. The electronic message must be devoted exclusively to voter registration.

In states where this condition applies, schools must request voter registration forms from the state 120 days prior to the state’s deadline for registering to vote. This provision applies to general and special elections for federal office and to the elections of governors and other chief executives within a state. If a school does not receive the forms within 60 days prior to the deadline for registering to vote in the state, it is not liable for failing to meet the requirement during that election year.

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# Program Reviews, Sanctions & Closeout

*In this chapter we discuss program reviews conducted at schools, sanctions and corrective actions, and procedures for schools that are ending their participation in one or more of the FSA programs.*

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## PROGRAM REVIEWS BY THE DEPARTMENT

One of the U.S. Department of Education's functions is to oversee the FSA programs to help ensure that they are administered properly. The Department conducts program reviews to confirm that a school meets FSA requirements for institutional eligibility, financial responsibility, and administrative capability. A program review will identify compliance problems at the school and identify corrective actions.

If a school is cited in a program review for improperly disbursing FSA program funds, the school must restore those funds as appropriate. If a school is cited in a program review for other serious program violations, the school may be subject to corrective action and sanctions, such as fines, emergency action, or limitation, suspension, or termination discussed later in this chapter.

A program review covers many of the same areas as an audit (see *Chapter 4*), including fiscal operations and accounting procedures, as well as the school's compliance with the specific program requirements for student eligibility and awards. However, program reviews are not conducted annually at every school. Priority is given to schools that meet certain criteria as specified in the law.

During a program review, Department reviewers evaluate the school's compliance with FSA requirements, assess liabilities for errors in performance, and identify actions the school must take to improve its future administrative capabilities. The reviewers will:

- analyze the school's data and records and identify any weaknesses in the school's procedures for administering FSA funds;
- determine the extent to which any weaknesses in the school's administration of FSA funds may subject students and taxpayers to potential or actual fraud, waste, and abuse;
- identify corrective actions that will strengthen the school's future compliance with FSA rules and regulations;

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## CHAPTER 9 HIGHLIGHTS

- Program Reviews by the Department
- Corrective Actions & Sanctions
- Closeout Procedures (When FSA Participation Ends)

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## Related information

- ➔ Audit requirements—*Chapter 4*
- ➔ Updating the E-App for changes to programs and locations—*Chapter 5*

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## FSA Assessments

To assess your school's compliance with the provisions of this chapter see the FSA Assessment module for "Institutional Eligibility" ([ifap.ed.gov/qahome/qaassessments/institutionalelig.html](http://ifap.ed.gov/qahome/qaassessments/institutionalelig.html)).

### **Program review priority**

The Department gives priority in program reviews to schools that meet criteria specified in the law as follows:

- a school has a high cohort default rate or dollar volume of default;
- a school has a significant fluctuation in Pell Grant awards or FSA loan volume that is not accounted for by changes in the programs
- a school is reported to have deficiencies or financial aid problems by the appropriate state agency or accrediting agency;
- a school has high annual dropout rates; and
- it is determined by the Department that the school may pose a significant risk of failing to comply with the administrative capability or financial responsibility requirements.

In addition, the Department is required to:

- establish guidelines designed to ensure uniformity of practice in the conduct of program reviews;
- make copies of all review guidelines and procedures available to all participating schools;
- permit schools to correct administrative, accounting, or recordkeeping errors if the errors are not part of a pattern and there is no evidence of fraud or misconduct; and
- inform the appropriate state and accrediting agency whenever it takes action against a school.

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### **Communication with state agencies**

The Higher Education Amendments of 1998, Public Law 105-244, require that each state (through at least one state agency) must:

- furnish the Department, upon request, with information regarding licensing and other authorization for a school to operate in that state;
- promptly notify the Department of revocations of licensure or authorization; and
- promptly notify the Department of credible evidence that a school has committed fraud in the administration of the FSA programs or has substantially violated a provision of the HEA.

Department's recognition of state agencies  
Sec. 495 of the HEA  
20 USC 1087–1(b)  
34 CFR 603

- quantify any harm resulting from the school's impaired performance and identify liabilities where noncompliance results in loss, misuse, or unnecessary expenditure of federal funds; and
- refer schools for administrative action to protect the interests of students and taxpayers, when necessary.

### *Scope of the review*

A program review may be either a general assessment review, a focused review, or a compliance assurance review. A general assessment review is the most common type of review and is normally conducted to evaluate the school's overall performance in meeting FSA administrative and financial requirements. A focused review is normally conducted to determine if the school has problems with specific areas of FSA program compliance. A compliance assurance review is a tool that is used to help validate the Department's risk assessment system.

For general assessment, compliance assurance, and some focused reviews, the review team will identify students whose files will be reviewed. In general, a review sample consists of 15 randomly selected students from each award year under review. The academic file, student account ledger, student financial aid file, and the admissions file for each student in the review sample will be analyzed.

Reviewers will also examine school records that are not specific to individual students. These records include required policies and procedures, fiscal records, and consumer information (i.e. the school's website, school catalog(s), pamphlets, etc.).

It may be necessary for the reviewer to conduct interviews with school officials including academic or education personnel or the registrar, admissions personnel, financial aid personnel, fiscal office personnel, placement officer, and/or campus security personnel. In addition, the reviewer may interview students.

### *Location of the review*

Program reviews are typically conducted at the institution. However, in some circumstances institutions are asked to submit copies of selected records to the Department for review at its offices, and interviews are conducted via telephone rather than in person.

### *Notification of the review*

Most reviews are announced up to 30 days prior to the review by a telephone call to the president and financial aid administrator. The school is also sent written notice of the review and is asked to provide relevant materials prior to the start of the review (e.g., policies and procedures, consumer publications, a list of FSA recipients, etc.). The school will also be expected to make other records available on-site at the start of the review. In some cases, notice for the review is given the day before the review (via overnight delivery or fax), the morning of the review (via fax), or at the time the review team arrives at the school.

## Case Management & School Participation Teams

Case management is the Department's approach to oversight of schools that participate in the FSA programs. School Participation Management conducts program reviews, reviews compliance audits and financial statements, reviews recertification applications, and provides the Department with a picture of a school's overall compliance through the use of School Participation Teams.

FSA's School Eligibility Service Group (SESG) coordinates the case management approach. School Participation Teams are staffed by personnel in the regions and in Washington, DC, and each is assigned a portfolio of schools. Each team is responsible for oversight functions for the schools in its portfolio. These functions include audit resolution, program reviews, financial statement analysis, initial eligibility and recertification, and method of payment.

The entire team will evaluate information on the school from a variety of sources to identify any compliance issues at the school. The team can then assess potential risk to the FSA programs and determine appropriate action. Once appropriate actions are decided upon, the case manager assigned to the school ensures that the recommended actions are taken.

School Participation Teams will collect and review information on a school from many sources including, but not limited to:

- applications for recertification,
- financial and compliance audits,
- state agencies,
- accrediting agencies and licensing boards,
- student complaints, and
- Department databases.

A School Participation Team may decide to take actions that include, but are not limited to:

- renewing full recertification or awarding only provisional certification;
- initiating a program review;
- establishing liabilities;
- developing a strategy for providing technical assistance,
- transferring the school to the cash monitoring or reimbursement payment method (see *Volume 4: Processing Aid and Managing FSA Funds*);
- requiring a letter of credit; and
- referring the school for an enforcement action.

Actions do not always have to be negative. For example, the School Participation Team can recommend a school for participation in the Quality Assurance Program.

Case management provides the additional benefit of permitting a school to contact one team that will have all information on the school available in one place. (For a list of phone numbers for the regional School Participation Teams, see the "Help" link on the IFAP website (<http://ifap.ed.gov/>).



## **Administrative subpoena authority**

HEA Sec. 490A

The Amendments of 1998 give the Department the authority to issue administrative subpoenas to assist in conducting investigations of possible violations of the provisions of FSA programs. In addition, the law authorizes the Department to request the Attorney General to invoke the assistance of any court of the United States for purposes of enforcing a subpoena if necessary.

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## **Access to records**

Access includes the right to copy records (including computer records), to examine computer programs and data, and to interview employees without the presence of management or the presence of the school's or a servicer's tape recorder.

Access and examination cite

34 CFR 668.24(f)

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## **Appealing audit and program review determinations**

The law allows for appeals of final audit or program review determinations. Note that only a final determination may be appealed. The letter conveying a final audit determination is clearly identified as a Final Audit Determination Letter and explains the appeals procedures. For a program review, the final determination letter is identified as a Final Program Review Determination Letter.

34 CFR Part 668 Subpart H

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## **School Participation Team contacts**

You can locate the School Participation Team for your region by going to the "Help" menu on the IFAP website and choosing Contact Information > Federal Student Aid Offices.

Schools are required to cooperate with the Department in the event of a program review and provide unrestricted access to any and all information requested to conduct the review. Failure to provide this access to the program review team may lead to an adverse administrative action.

### *Entrance and exit/status conference*

The review team will hold an entrance conference with school officials at the beginning of the review. The purpose of the entrance conference is to provide school officials with information about the review and the program review process, and for reviewers to learn how Federal Student Aid is processed at the school.

The review team will hold an exit or status conference at the end of a program review. The purpose of the exit conference is to inform school officials about the next steps in the process, summarize preliminary findings, advise school officials of any immediate changes that must be made, and/or provide details of any remaining outstanding items. If the fieldwork is not complete or the data has not been fully analyzed, a status meeting is conducted. A return visit may be necessary or an exit conference may be conducted via telephone after further analysis is completed.

### *Written report*

The program review team prepares a preliminary written report after completion of the review. In most instances, this report will be sent to the school within approximately 60 days of the review. The school may respond to this report if it wishes to offer additional information to support its position or if it disagrees with any of the report's findings. When the Department has fully considered the school's response and any additional documentation provided by the school, the Department will send a Final Program Review Determination (FPRD) letter to the school.

### *Final Program Review Determination (FPRD)*

An FPRD is a report that includes each finding identified in the program review report, the school's response, and the Department's final determination. The FPRD may require the school to take further action to resolve one or more of the findings. This action may include making student level adjustments in COD and the G5 payment system, and paying liabilities to the Department, student, or lenders on behalf of the student.

Any funds the school owes as a result of the FPRD must be repaid within 45 days of the school's receipt of the FPRD unless the school submits an appeal to the Department or enters into a payment plan with ED's Financial Management Group. The cover letter of the FPRD provides instructions on how to file an appeal. If payment or an appeal is not received within 45 days, the Department may elect to use administrative offset to collect the funds owed.



## Accrediting Agency Role

The goal of accreditation is to ensure that education provided by postsecondary educational institutions meets an acceptable level of quality. The Department recognizes agencies that meet established criteria, and such recognition is a sign that an agency has been determined to be a reliable authority on the quality of the institutions or programs the agency accredits.

An accrediting agency can be recognized by the Department for institutional or programmatic accreditation. An institutional accreditation agency accredits an entire institution. A programmatic accrediting agency accredits specific educational programs, departments, or schools within an institution.

An agency must have standards that effectively address the quality of a school or program in the following areas:

- success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, state licensing examination, and job placement rates;
- curricula;
- faculty;
- facilities, equipment, and supplies;
- fiscal and administrative capacity as appropriate to the specific scale of operations;
- student support services;
- recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising;
- measures of program length and the objectives of the degrees or credentials offered;
- record of student complaints received by, or available to, the agency;
- record of compliance with the school's FSA program responsibilities, based on items such as default rate data and the results of compliance audits and program reviews and any other information that the Department may provide to the agency; and
- any additional accreditation standards the accrediting agency deems appropriate.

There are many additional statutory requirements a national accrediting agency must meet to qualify for recognition. For example, an accreditation agency must:

- consistently apply and enforce standards for accreditation that ensure that the education or training offered by an institution or program, including any offered through correspondence or telecommunications, is of sufficient quality to achieve its stated objectives for the duration of the school's accreditation period;
- perform, at regularly established intervals, on-site inspections and reviews of institutions of higher education (that may include unannounced site visits) with particular focus on educational quality and program effectiveness;
- agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action; and
- if it is an institutional accrediting agency, maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after an agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue meeting the agency's standards.

Information and a complete list of agencies recognized by the Department can be found at

**[www.ed.gov/admins/finaid/accred/index.html](http://www.ed.gov/admins/finaid/accred/index.html)**

Department's recognition of accrediting agencies

Sec. 496 of the HEA

20 USC 1099b

34 CFR 602

## Regulations on corrective actions & sanctions

For details on steps that a school should follow in any of these situations, see Subpart G of the general provisions regulations and Section 600.41 of the institutional eligibility regulations.

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## Actions due to program violations or misrepresentation

If a school has violated the FSA program regulations, the Department may (at its sole discretion) allow the school to respond to the problem and indicate how it will correct it. However, if the school has repeatedly violated the law or regulations, or the Department has determined that the violations are egregious, the Department may take an emergency action, fine the school, or initiate a limitation, suspension, or termination of FSA program participation.

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## Criminal penalties

HEA Sec. 490

## CORRECTIVE ACTIONS & SANCTIONS

### *Sanctions*

Sanctions include emergency actions, fines, limitations, suspensions, and terminations (see descriptions on next page). The Department may initiate actions against any school that:

- violates the law or regulations governing the FSA programs, its Program Participation Agreement, or any agreement made under the law or regulations; or
- substantially misrepresents the nature of its educational programs, its financial charges, or its graduates' employability. For details on misrepresentation, see *Chapter 6*.

In addition, the Department has the authority to terminate a school or program that no longer meets the eligibility criteria given in *Chapter 1*.

Similarly, the Department may also sanction a third-party servicer that performs functions related to the FSA programs. Further, the Department has the authority to sanction a group of schools or servicers if it finds that a person or entity with substantial control over all schools or servicers within the group has violated any of the FSA program requirements or has been suspended or debarred from program participation. (See *Chapters 1* and *4*).

### *Criminal penalties*

The law provides that any person who knowingly and willfully embezzles, misapplies, steals, obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under Title IV of the Higher Education Act, or attempts to commit any of these crimes will be fined up to \$20,000 or imprisoned for up to five years, or both. If the amount of funds involved in the crime is \$200 or less, the penalties are fines up to \$5,000 or imprisonment up to one year, or both.

Any person who knowingly and willfully makes false statements, furnishes false information, or conceals material information in connection with the assignment of an FSA program loan or attempts to do so, will, upon conviction, be fined up to \$10,000 or imprisoned for up to one year, or both. This penalty also applies to any person who knowingly and willfully:

- makes, or attempts to make, an unlawful payment to an eligible lender of loans as an inducement to make, or to acquire by assignment, a loan insured under such part.
- destroys or conceals, or attempts to destroy or conceal, any record relating to the provision of FSA program assistance with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part.

## Corrective Actions & Sanctions

### Emergency action

The Department may take an emergency action to withhold FSA program funds from a school or its students if the Department receives information, determined by a Department official to be reliable, that the school is violating applicable laws, regulations, special arrangements, agreements, or limitations. To take an emergency action, the Department official must determine that:

- The school is misusing federal funds.
- Immediate action is necessary to stop this misuse.
- The potential loss outweighs the importance of using established procedures for limitation, suspension, and termination.

The school is notified by registered mail (or other expeditious means) of the emergency action and the reasons for it. The action becomes effective on the date the notice is mailed.

An emergency action suspends the school's participation in all FSA programs and prohibits the school from disbursing FSA program funds or certifying FFEL applications. The action may not last more than 30 days unless a limitation, suspension, or termination proceeding is initiated during that period. In that case, the emergency action is extended until the proceeding, including any appeal, is concluded. The school is given an opportunity to show cause that the action is unwarranted.

### Fine

The Department may fine a school up to \$27,500 for each statutory or regulatory violation. In determining the amount of the fine, the Department considers the gravity of the offense, the nature of the violation, and the school's size. The school is notified by certified mail of the fine action, the amount of the fine, and the basis for the action. A school has twenty days from the date of mailing to submit a written request for a hearing or to submit written material indicating why the fine should not be imposed.

### Limitation

Under a limitation, the Department imposes specific conditions or restrictions upon a school as it administers FSA program funds. As a result, the school is allowed to continue participating in the FSA programs. A limitation lasts for at least 12 months. If the school fails to abide by the limitation's conditions, a termination proceeding may be initiated.

### Suspension

A suspension removes a school from participation in the FSA programs for a period not to exceed 60 days (unless a limitation or termination proceeding has been initiated, or the Department and the school agree to an extension). A suspension action is used when a school can be expected to correct an FSA program violation in a short time.

### Corrective action

As part of any fine, limitation, or suspension proceeding, the Department may require a school to take corrective action. This may include making payments to eligible students from its own funds or repaying illegally used funds to the Department. In addition, the Department may offset any funds to be repaid against any benefits or claims due the school.

### Termination

A termination ends a school's participation in the FSA programs. A school that has violated the law or regulations governing the FSA programs, its PPA, or any other agreement made under FSA regulations and was terminated from participating in the FSA programs generally may not apply to be reinstated for at least 18 months.

### Possibility of reinstatement

A school requesting reinstatement in the FSA programs must submit a fully completed E-App to the Department and demonstrate that it meets the standards in 34 CFR Part 668. As part of the reinstatement process, the school must show that it has corrected the violation(s) on which its termination was based, including repaying all funds (to the Department or to the eligible recipients) that were improperly received, disbursed, caused to be disbursed, or withheld. The Department may approve the request, deny the request, or approve the request subject to limitations (such as granting the school provisional certification). If the Department approves the reinstatement request, the school will receive a new ECAR and enter into a new PPA.

### Notification requirement

34 CFR 600.40

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(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

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### School Participation Team contacts

A school that is ending participation in one or more FSA programs should contact the School Participation Team for its region (listed on IFAP under the “Help” menu; go to Contact Information > Federal Student Aid Offices).

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### Effect on student eligibility for interest subsidies

A student enrolled at a school that loses eligibility or discontinues participation in the Direct Loan program, can continue to receive interest subsidies if the student enrolls and remains enrolled at an eligible school.

## CLOSEOUT PROCEDURES (WHEN FSA PARTICIPATION ENDS)

A school may stop participating in the FSA programs voluntarily or it may be required to leave involuntarily, as described below. In either situation, it must follow the closeout procedures specified in the FSA regulations.

### *Involuntary withdrawal from FSA participation*

A school’s participation ends in the following circumstances:

- the school closes or stops providing instruction for a reason other than normal vacation periods or as a result of a natural disaster that directly affects the school or its students (see details on next page);
- the school loses its accreditation (see details on next page);
- the school loses its state licensure;
- the school loses its eligibility (see details on next page);
- the school’s PPA expires;
- the school’s participation is terminated under Subpart G;
- the school’s provisional certification is revoked by the Department;
- the school’s cohort default rate exceeds allowable limits; or
- the school files a petition for bankruptcy or the school, its owner, or its CEO is responsible for a crime involving FSA funds.

### *Closeout procedures when participation ends*

In general, a school that ceases to be eligible must notify its School Participation Team within 30 days of its loss of eligibility to participate in the FSA programs.

The school must also comply with the following minimum requirements:

- within 45 days of the effective ending date of participation, submit to the Department all financial reports, performance reports, and other reports, as well as a dated letter of engagement for an audit by an independent certified public accountant of all FSA program funds received. The completed audit report must be submitted to the Department within 45 days after the date of the letter of engagement.
- report to the Department on the arrangements for retaining and storing (for the remainder of the appropriate retention period described in *Chapter 7*) all records concerning the school’s management of the appropriate FSA programs.
- tell the Department how the school will provide for collecting any outstanding FSA loans held by the school.
- refund students’ unearned FSA student assistance. (See *Volume 5, Chapter 2*.)

In addition, a school that closes must refund to the federal government or, following written instructions from the Department, otherwise distribute

## End of FSA participation

### ***School closes or stops providing instruction***

If the school closes its main campus or stops providing instruction on its main campus, its loss of eligibility includes all its locations and programs.

If a school ceases to provide educational instruction in all FSA-eligible programs, the school should make arrangements for its students to complete their academic programs. If the school chooses to enter into a formal teachout arrangement, the school should contact the appropriate School Participation Team for guidance.

### ***School loses eligibility***

A school loses its eligibility to participate in the FSA programs when it no longer meets the requirements of 34 CFR Part 600, certain requirements of Part 668, or when the Department terminates the school under Subpart G of the General Provisions.

### ***Voluntary withdrawal from FSA participation***

For any number of reasons, a school may voluntarily withdraw from participating in one or all of the FSA programs. For instance, a school might wish to withdraw from the Perkins Loan Program to work on lowering high student-loan cohort default rates. To withdraw from one or all of the FSA programs, the school must notify the Department via the electronic application. For more information on these requirements and procedures, contact the appropriate School Participation Team.

A school that withdrew voluntarily (for instance, to lower its default rate) can request to participate again without the waiting period required for a school that was terminated from the program involuntarily or withdrew voluntarily while under a show-cause or suspension order.

Withdrawing from the FSA programs while under a termination order or other sanction—or to avoid being placed under them—is not considered a voluntary withdrawal.

### ***School loses primary accreditation***

When a school loses its institution-wide accreditation, the Department generally may not certify or recertify that school to participate in any FSA program for two years after the school has had its accreditation withdrawn, revoked, or otherwise terminated for cause or after a school has voluntarily withdrawn under a show cause or suspension order. If a school wishes to be reinstated, it must submit a fully completed E-App to the Department.

The Department will not recertify a school that has lost its institution-wide accreditation in the previous two years unless the original accrediting agency rescinds its decision to terminate the school's accreditation. In addition, if a school voluntarily withdrew from accreditation during the last two years under a show cause or suspension order, the Department will not recertify the school unless the original order is rescinded by the accrediting agency. Finally, a school may not be recertified on the basis of accreditation granted by a different accrediting agency during the two-year period.

There are two exceptions to the two-year rule:

1. If the Department determines that loss of institution-wide accreditation was due to the school's religious mission or affiliation, the school can remain certified for up to 18 months while it obtains alternative accreditation.
2. If a school's institution-wide accrediting agency loses its Department recognition, the school has up to 18 months to obtain new accreditation.

Note that it is possible for accreditation to be withdrawn from one of the programs at a school without affecting the accreditation (and eligibility) of other programs at the school.

### **Definition of commitment**

A commitment under the Pell and TEACH grant programs occurs when a student is enrolled and attending the school and has submitted a valid Student Aid Report to the school or when a school has received a valid institutional student information report.

A commitment under the Campus-Based programs occurs when a student is enrolled and attending the school and has received a notice from the school of the amount that he or she can expect to receive and how and when that amount will be paid.

34 CFR 668.26(e)(1)

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### **Teach-out plan**

34 CFR 668.14(b)(31)

Federal Register October 29, 2009

Also see—

Teach-out plan definition

34 CFR 600.2

Eligibility of additional locations for teach-out purposes

34 CFR 600.32(d)

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### **Recovery of loan discharges when branch/location closes**

If an additional location or branch of an institution closes and borrowers who attended the school obtain loan discharges by reason of the closure of the location or branch (or improper ATB or loan certifications), the Department will pursue recovery against the larger institution, its affiliates, and its principals.

20 USC 1087(c)(1)

any unexpended FSA funds it has received (minus its administrative cost allowance, if applicable).

### *Unpaid commitments*

If a school's participation ends during a payment period, but the school continues to provide education in the formerly eligible program until the end of the payment or enrollment period, the school may use the FSA funds in its possession to—

- satisfy unpaid Pell Grant or Campus-Based program commitments made to students for that payment period or for previously completed payment periods before the school's participation ended.
- use the FSA funds in its possession to satisfy unpaid Direct Loan commitments made to students for that period of enrollment before participation ended by delivering subsequent Direct Loan disbursements to the students or by crediting them to their accounts (if the first disbursement already was delivered or credited to the students' accounts before the school's participation ended).

Note that the school may request additional funds from ED to meet these commitments.

### *Teachout plan*

A school must submit a teach-out plan to its accrediting agency if

- ED initiates an emergency action, or initiates the limitation, suspension, or termination of the school's participation in any FSA program;
- the school's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation.
- the school's state licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.
- the school intends to close a location that provides 100% of at least one program.
- the school otherwise intends to cease operations.

### *Closure of a branch or location*

A separate closeout audit is not required if a school closes an additional location or a branch campus because the next due compliance audit for the school must report on the use of FSA program funds at the closed location. However, the school must notify the Department of the additional location or branch closure. See *Chapter 5* for information on reporting information to the Department.



*Loss of eligibility or withdrawal from the Direct Loan Program*

If a school is notified that it has lost its eligibility to participate in the Direct Loan Program and the school does not intend to appeal the decision, it must immediately inform all current and prospective students of its loss of eligibility. The school must also explain that it can no longer originate Direct Loans for students or parents. If the school appeals its loss of eligibility within the required timeframe, the school may continue originating Direct Loans during the appeal process. Once a final decision on the appeal is made, the school must take the actions described in the Department's final appeal determination letter.

If a school plans to withdraw from participation in the Direct Loan Program, it must notify the Department of its decision in writing. Once the effective date of withdrawal has been established, the school is prohibited from disbursing loan funds to the student. However, if your school made a first disbursement to the student before it lost eligibility, it may still be able to make a subsequent disbursement to that student. See the conditions in 34 CFR 668.26(d).

