
Institutional and Program Eligibility

This chapter discusses the three types of institutions that are eligible to participate in the SFA programs and the effect of program eligibility requirements on institutional eligibility.

A school that wishes to participate in the SFA 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 for a designation (they do not seek to participate) solely so that students attending the school may receive deferments on SFA program loans, or be eligible for the HOPE/Lifetime Learning Scholarship tax credit, or so that the school may apply to participate in federal HEA programs other than the SFA programs. The same application form is used to apply for both eligibility to participate and certification for participation (see chapter 10).

THE THREE DEFINITIONS OF ELIGIBLE INSTITUTIONS

The institutional eligibility regulations 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 SFA 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, the definitions are not mutually exclusive. That is, a public or private nonprofit school may meet the definition of more than one type of eligible institution.

INSTITUTIONAL CONTROL

The *control* of an institution distinguishes whether the school 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.

Definitions of Eligible Institutions of Education Cite

34 CFR 600.4, 600.5, and 600.6

Nonprofit Institution

A school that is

- *owned and operated by one or more non-profit corporations or associations whose net earnings do not benefit any private shareholder or individual,*
- *legally authorized to operate as a non-profit organization by each state in which it is physically located, and*
- *determined by the Internal Revenue Service to be eligible for tax-deductible contributions*

ELIGIBLE INSTITUTION

To be eligible, all institutions must adhere to the following requirements:

Legal Authorization by the state where the institution offers postsecondary education to provide a postsecondary education program.

Accreditation by a nationally recognized accrediting agency or has met the alternative requirements, if applicable.

Admissions Admits as regular students only persons with a high school diploma or its recognized equivalent, or persons beyond the age of compulsory attendance in the state where the institution is located.

Types of Institutional Control

<i>Institution of Higher Education</i>	<i>Proprietary Institution of Higher Education</i>	<i>Postsecondary Vocational Institution</i>
A public or private nonprofit educational institution located in a state*	A private, for-profit educational institution located in a state*	A public or private nonprofit educational institution located in a state*

Eligible Programs

<p>(1) Associate, bachelor's, graduate, or professional degree, or</p> <p>(2) At least a two-year program that is acceptable for full credit toward a bachelor's degree, or</p> <p>(3) At least a one-year training program that leads to a degree or certificate (or other recognized educational credential) and prepares students for gainful employment in a recognized occupation.</p>	<p>Program offered: must provide training for gainful employment in a recognized occupation, and must meet the criteria of at least one category below.</p> <p>(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.</p> <p>(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.</p> <p>(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 FFEL and Direct Loan participation.</p>
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Additional Rules

Legally authorized to give (and has been giving) postsecondary instruction for at least two consecutive years (Two-Year Rule). (You can find the definition of *state* on the next page.)

Special rule: Derives no more than 90% of its revenues from SFA funds.

The following pages expand on the aforementioned requirements.

LEGAL AUTHORIZATION BY A STATE

With the exception of foreign schools (see the discussion under *Foreign Schools* later in this chapter), an eligible institution under any of the three definitions must be located in a state. Generally, the determining factor is the physical location of the main campus or place of instruction. For instance, if a school's main campus is in a state, as defined above, the school can still have an additional location in a foreign country.

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. The state's legal authorization may be provided by the licensing board or educational agency. In some cases, the school's charter is its legal authorization. In other cases, a school is considered to be legally authorized if state law does not require it to have a license or other formal approval.

Schools must provide evidence that they have the authority to operate in a state at the time of the school's certification to participate in the SFA programs. For more information on applying for participation in the SFA programs, see chapter 10.

ACCREDITATION

Generally, an institution must be accredited or preaccredited by a nationally recognized accrediting agency or association (both referred to here as agencies) to be eligible. The procedures and criteria for recognizing accrediting agencies are found in chapter 11.

The Department periodically publishes a list of recognized accrediting bodies in the Federal Register, based on criteria given in 34 CFR Part 602. The list can be found on the Department's Web Site at:

<http://ifap.ed.gov/IFAPWebapp/index.jsp>

Copies of this list are also available from the Department at the following address:

U.S. Department of Education
Accreditation and State Liaison
1990 K Street, N.W. (Room 7159)
Washington, DC 20006-8509

State defined

"State" includes not only the 50 states, but also American Samoa, Puerto Rico, the District of Columbia, Guam, the Virgin Islands, and the Northern Mariana Islands. A "state" also includes the Freely Associated States, which include the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Nationally Recognized Accrediting Agency or Association:

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

Preaccredited:

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

Alternatives To
Accreditation Cite
34 CFR 600.4(a)(5)(ii)
34 CFR 600.6(a)(5)(ii)

Alternatives to accreditation

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

Changes in accreditation

If a school loses its primary accreditation, it is ineligible to participate in the SFA programs and must notify the Department within 10 days.¹ This can be done on-line through the electronic application. 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. If a school changes accrediting agencies, it may be subject to termination unless the school submits to the Department all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing accrediting agencies. To continue its eligibility status, a school must obtain written approval from the Department for a change of accrediting agency (see chapter 10).

Change in primary institution-wide accreditation

If the school decides to change its institution-wide accreditation, it must notify the Department of Education when it begins the accreditation application process with a different agency. As part of the notice, the school must submit materials about its current accreditation and materials demonstrating reasonable cause for changing accreditation. If it fails to notify the Department of the proposed change to its primary institution-wide accreditation, or if the school does not provide the materials just described, the Department will not recognize the school's existing accreditation. This means the school would no longer have accredited status, and would no longer be eligible to award federal student financial aid or take part in other programs under the Higher Education Act of 1965, as amended (HEA).

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 submit to the Department,

Changing Accrediting
Agencies Cite
34 CFR 600.11

¹ 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.

its current institution-wide accrediting agency, and the prospective institution-wide accrediting agency the reason 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 reasons 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 federal student financial aid or take part in other programs under the HEA.

Primary accreditor

The primary accreditor is an accrediting agency whose scope is institution-wide rather than only programmatic is considered the primary accreditor. For SFA purposes, the *primary accrediting agency* is referred to as the *accrediting agency*.

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 SFA funds and must so inform the Department. 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 11 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.

Students who are beyond the age of compulsory attendance but who do not have a high school diploma or its recognized equivalent must meet ability-to-benefit criteria or meet the student eligibility requirements for a student who is home-schooled to be eligible for aid from the SFA programs. (For more information on this student eligibility requirement, see *Volume 1 — Student Eligibility*.)

Extension of student eligibility to home-schooled students was added by the Amendments of 1998 and implemented by final regulations published October 22, 1999.

High school diploma

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, which is a recognized equivalent of a high school diploma (see below). Rather, the school may rely on the student's certification that he or she has received the credential and a copy of

Regular Student Definition

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.

Regular Student Cite

34 CFR 600.2

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 Department recognizes that there are special cases. If a student has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree, the student's academic transcript is considered equivalent to a high school diploma. A student without a high school diploma who is seeking enrollment in a program of at least the associate-degree level, and who has excelled academically in high school and met formalized written admissions policies of the school, is also considered to have the equivalent of a high school diploma. These students may be eligible to receive SFA program funds without having to meet the ability-to-benefit requirements, provided the students are no longer enrolled in high school. A student who has neither a high school diploma or its recognized equivalent may become eligible to receive SFA program funds by achieving a passing score (specified by the Department) on an independently administered test approved by the department. (For a complete discussion of the Ability-to-Benefit provisions, see Volume 1 — Student Eligibility.

Ability to Benefit Cite
34 CFR 668, Subpart J

A school that admits students who do not have a high school diploma or its recognized equivalent has some additional considerations. Unless the school provides a four-year bachelor's degree program or two-year associate degree program, it does not qualify as an eligible institution if, for its latest complete award year, more than 50% of its regular enrolled students had neither a high school diploma or its equivalent, . A waiver of this limitation is possible for some schools. See the discussion under *Ability to Benefit Limitation* later in this chapter for more information.

Home schooled

An eligible institution may admit only persons who

- (1) have a high school diploma;
- (2) have the recognized equivalent, as defined by the regulations, of a high school diploma; or
- (3) are beyond the age of compulsory attendance in the state in which the institution is located. If a student is not beyond the age of compulsory attendance, a school may not admit a student unless he or she has a high school diploma or a recognized equivalent.

Home Schooling Cite
34 CFR 668.32(e)

Many states require a certificate of completion and accept a home-schooling certificate as a certificate of completion while not considering a home-schooling certificate to be the equivalent of a high school diploma. **For institutional eligibility purposes, a certificate of home schooling is considered the equivalent of a high school diploma only if the student’s home state specifically considers the home-schooling certificate as the equivalent of a high school diploma.**

If a student is below the age of compulsory attendance in the state in which the institution is located and the student’s home state does not specifically consider the home-study certificate to be a high school diploma, a school may not admit the student without jeopardizing its institutional eligibility.

GED preparatory program required

A school that participates in the SFA programs and admits students without a high school diploma or its equivalent must make a GED preparatory program available to its students. For more information see the discussion of the Program Participation Agreement in chapter 2.

“TWO-YEAR” RULE

To be eligible as a proprietary institution or a postsecondary vocational institution, a school must have provided continuous postsecondary instruction (and been legally authorized to do so) for at least two consecutive years. 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 branch campus seeking status as a main campus or freestanding institution is subject to the two-year rule. Final regulations published October 29, 1999 clarify that a branch campus must be in existence for two years after certification as a branch campus before the branch can seek certification as a main or freestanding school. A branch campus’s time as a branch campus counts toward the two years.

An additional location must obtain approval from the Department to become a branch campus. A branch campus then must operate independently for two years (satisfy 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. Time as an eligible institution of higher education or an additional location of an eligible institution of higher education does count toward the two-year rule.

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 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*

Branch Campus Cite

34 CFR 600.2 and 600.8

Additional Location Cite

34 CFR 600.32

ADDITIONAL INSTITUTIONAL ELIGIBILITY FACTORS

90/10 Cite
Sec. 102
34 CFR 600.5

A school becomes an ineligible institution if the school violates, among other requirements, the 90/10 Rule (applicable to proprietary schools only), the Correspondence Course Limitation, the Correspondence Student Limitation, the Incarcerated Student Limitation, or the Ability-To-Benefit Student Limitation. In addition, a school is not eligible if it files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving SFA program funds. A school that becomes ineligible because of one of these factors must immediately stop awarding SFA program funds and must comply with the requirements in 34 CFR 668.26 for a school that has lost its SFA participation. For more information on requirements when a school's SFA participation ends, see chapter 11.

Demonstrations of compliance

All of the *limitation* requirements and the 90/10 Rule involve certain percentage calculations, that are performed by the school either to demonstrate compliance with a requirement or to demonstrate eligibility for a limitation waiver. For each of the tests enumerated above a calculation performed by the school must be attested to by the certified public accountant (CPA) who prepares the school's audited financial statement or its SFA compliance audit (for more information on audits, see chapter 11). If a school's initial or previous calculation was in error, the CPA's report must be part of the audit workpapers and must include a recalculation. The CPA's attestation report must indicate whether the school's determinations (including any relevant waiver or exception) are accurate. Requirements for demonstrating compliance with the 90/10 Rule are discussed below.

For each of the limitation requirements, the school must notify the Department 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 SFA program as of the last day of the most recent award year.

To regain institutional eligibility lost due to the limitation requirements, the school must demonstrate its compliance with all eligibility requirements and its ability to stay outside prohibited limits for at least one award year. Further, 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.

Proprietary institutions have 90 days after their most recent fiscal year has ended to report to the Secretary if they did not satisfy the 90/10 Rule for that period. Schools that fail to satisfy the 90/10 Rule lose their eligibility as of the last day of that fiscal year. A school changing from for profit to non profit must continue to file this report for the first year of its non profit status.

If a school becomes ineligible because it files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving SFA program funds, the school must notify the Department within 10 days. 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.

The 90/10 Rule (formerly the 85/15 Rule)

To be eligible for SFA participation, a proprietary institution may derive no more than 90% of its revenues from the SFA programs.

As specified in 34 CFR 600.5(d), a school must determine its revenue percentages using the following formula for its latest complete fiscal year:

SFA Program Funds (except SSIG or FWS) used for tuition, fees, and other institutional charges to students

The sum of revenues generated by the school from: (1) tuition, fees, and other institutional charges for students enrolled in eligible training programs; plus (2) school activities necessary for the education or training of students enrolled in those eligible programs*

*to the extent not included in tuition, fees, and other institutional charges

The cash basis of accounting

A Proprietary institution of higher education must use the cash basis of accounting in determining whether it satisfies the 90/10 rule. Under the cash basis of accounting, revenue is recognized when received.

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. An institution may recognize revenue only when the institution receives cash, i.e., when there is an inflow of cash. As a result, **in order for an institution to recognize revenue under the cash basis of accounting, that revenue must represent cash received from a source outside the institution.**

Exclusions from fraction

In determining whether a school satisfies the 90/10 Rule, the totals used in the fraction do not include refunds paid to or on behalf of students who have withdrawn, dropped out, been expelled, or otherwise failed to complete the period of enrollment. Charges for books, supplies, and equipment are not included in the fraction unless the amount is part of the tuition, fees, or other institutional charges.

SFA Program funds for institutional charges

In figuring what SFA program funds were used to pay tuition, fees, and other institutional charges, a school **must** assume that any SFA program funds disbursed (or delivered) to or on behalf of a student were used for such costs, regardless of whether the institution credits those funds to the student's account or pays them directly to the student, **unless** those costs were otherwise paid by

- grant funds provided by nonfederal public agencies,
- grant funds provided by independent private sources,
- funds from qualified government agency job training contracts, or
- funds received from a prepaid State tuition plan.

Revenues

In figuring revenues generated by school activities, a school may include only revenue from activities that are conducted on campus or at a facility under the control of the school, that are performed under the supervision of a faculty member, and that are necessary for the training of its students who are enrolled in an eligible program.

When an institution 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.

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.

Additional 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.

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.

Revenue generated from the sale of nonrecourse institutional loans to an unrelated third party would 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 an institution'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 an institution. That would not be true in the case of the sale of other institutional assets.

Time period covered

As mentioned above, a proprietary institution must determine whether it satisfied the 90/10 Rule during its most recently completed fiscal year. For example, for schools using a calendar year as their fiscal year, their most recently completed fiscal year is the one that ended on December 31, 2000. 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, 2001.

Failure to satisfy the 90/10 rule

Schools that fail to satisfy the 90/10 Rule lose their eligibility on the last day of that fiscal year. As mentioned earlier, the school must immediately stop awarding SFA program funds and comply with the provisions of 34 CFR 668.26. Schools have 90 days after their most recently completed fiscal year has ended to report to the Department if they did not satisfy the 90/10 Rule for the fiscal period.

Financial Statement Disclosure

A proprietary school is required to disclose the percentage of its revenues derived from the SFA programs (that the school received during the fiscal year covered by the audit) as a footnote to its audited financial statement. For information on audited financial statements, see chapter 11.

Financial Statement Notification

A school must notify the Department of its failure to satisfy the 90/10 Rule at one of the following addresses:

By U.S. Mail to:

U.S. Department Of Education
Case Management and Oversight
Data Management and Analysis Division
Document Receipt and Control Center
P.O. Box 44805
L'Enfant Plaza Station
Washington, DC 20026-4805

or by commercial courier/overnight mail to

U.S. Department Of Education
Case Management and Oversight
Data Management and Analysis Division
Document Receipt and Control Center
7th and D Streets, SW
GSA Building, Room 5643
Washington, DC 20407

Phone: (202) 205-1936 (for this purpose)

Correspondence Limitations Cite
34 CFR 600.7(a)(1)(i) and (ii)

Correspondence Course

A home study course provided to students who are not physically attending classes at the school; a course that is part residential and part correspondence. (includes video courses unless students physically in attendance at the school receive the same video instruction in the same award year)

Telecommunications Course

A course offered principally through television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, satellite, or audio or computer conferences. (includes video courses if students physically attending the school also receive the video course in the same award year)

Distance Education

For information on the Distance Education, see chapter 12.

Correspondence course limitation

A school is not eligible for SFA program participation if, during the school's latest complete award year, more than 50% of its courses were taught through correspondence.²

In calculating the percentage of *correspondence courses*, a correspondence course can be either a complete educational program or a single course that is part of a larger, on-campus (residential) program. Regardless of how many times a course or program is offered during the award year, it is counted only once. (A course offered both through correspondence and on campus is counted as two courses in determining the total number of courses offered by the school.) The school's correspondence course calculation must be attested to by a CPA.

This requirement does not apply to a school that mainly provides vocational adult education or job training (as defined under the Carl D. Perkins Vocational and Applied Technology Education Act).

For information about a student's eligibility for SFA program funds while enrolled in a correspondence course and cost of attendance information for correspondence courses, see *Volume 1 — Student Eligibility*.

Correspondence student limitation

A school is also not eligible for SFA program participation if, for its latest complete award year, 50% or more of its regular students are enrolled in correspondence courses. *Telecommunications* courses may be considered correspondence courses (see the definitions on this page). The rules for calculating this percentage are the same as for the calculation of the correspondence course percentage. The calculation should reflect a straight *head count* of students: that is, each regular student must be counted regardless of full-time or part-time attendance and will be counted only once during an award year, regardless of withdrawal and reenrollment. (Students who enrolled,

² A telecommunications course is considered to be a correspondence course (program) if the sum of telecommunications and other correspondence courses provided by the school during its latest complete award year was equal to or more than 50% of the total courses provided that year.

withdrew, and subsequently received a full refund should not be included in the count.) As discussed previously, the school's correspondence student calculation must be attested to by a CPA.

This requirement is waived for a school that offers a two-year associate degree or four-year baccalaureate degree program if the school demonstrates that the students enrolled in its correspondence courses receive no more than 5% of the total SFA program funds received by all of the school's students. This requirement also does not apply to an institution that mainly provides vocational adult education or job training (as defined under the Carl D. Perkins Vocational and Applied Technology Education Act).

Incarcerated student limitation

A school is not eligible for SFA program participation if, in its latest complete award year, more than 25% of its regular students are incarcerated. A school can ask the Department to waive this limitation. For a 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 school offers other types of programs, the waiver would apply to any of the school's two-year bachelor's or four-year associate 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 Section 600.7(e)(2) of the Institutional Eligibility regulations and must be attested to by a CPA. If granted, the waiver is effective as long as the school continues to meet the waiver requirements each award year. For information on the eligibility of incarcerated students for SFA assistance, see *Volume 1 — Student Eligibility*.

Note: A school may request the waiver using the Application, by answering the questions in *section G* and explaining in question 69.

Ability-to-benefit limitation

A school does not qualify as an eligible institution if, for its latest complete award year, more than 50% of its regular enrolled students had neither a high school diploma nor its equivalent (referred to here as ability-to-benefit students), unless the school provides a four-year bachelor's degree program, or a two-year associate degree program.

The Department may waive this limitation for a nonprofit school if the school demonstrates, to the Department's satisfaction, that it exceeds the limitation because it serves significant numbers of ability-to-benefit students through government agency contracts, such as a contract under the Job Training Partnership Act. A school will not be granted this waiver if more than 40% of the school's enrolled regular students do not have a high school diploma or equivalent and are not served through contracts with federal, state, or local government agencies. The purpose of the contracts must be to provide job training to low-income individuals who are in need of the training. If granted, the waiver extends as long as the school continues to meet the waiver

Incarcerated Student Defined

An "incarcerated student" is 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. (does not include detention in a halfway house, home detention, or weekend-only sentences.)

Incarcerated Student Limitation Cite

34 CFR 600.7(a)(1)(iii) and 600.7(c)

Ability to Benefit Limitation Cite

34 CFR 600.7(a)(1)(iv)

requirements each award year. The school's *Ability-To-Benefit* calculation must be attested to by a CPA.

Bankruptcy

A school is not an eligible institution if the school, or 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, files for relief in bankruptcy or has entered against it an order for relief in bankruptcy.

Crimes involving SFA program funds

A school is not an eligible institution if the school, its owner, or its chief 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 SFA program funds; or
- has been judicially determined to have committed fraud involving SFA program funds.

PROGRAM ELIGIBILITY REQUIREMENTS

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.

Determination of program eligibility

Generally, a student must be enrolled in an eligible program to receive SFA funds (for more information, see *Volume 1 — Student 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 SFA program funds to students in that *program*. The school is ultimately responsible for determining that a program is eligible. In addition to determining that the program meets the eligible program definition, 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 agency to offer the program (if the state licenses individual programs at postsecondary institutions). (see the chart on *Eligible Institutions* and the discussion under *Legal Authorization by a State earlier in this chapter*)

A school's eligibility extends to all eligible programs and locations that were identified on the school's application for participation, unless the Department determines that certain programs or locations did not meet the eligibility requirements. In general, the school's eligible nondegree programs and locations are specifically named on the approval notice (Eligibility and Certification Approval Report

Program Eligibility Cite
34 CFR 668.8

[ECAR]). Additional locations and programs may be added later (see chapter 10).

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 SFA program assistance on the same basis as students enrolled in other eligible programs that are offered through traditional modes. If a program offered through correspondence meets the definition of an eligible program, students enrolled in that program will be considered eligible, with the limitation outlined in chapter 12.

It is not uncommon for a school to offer programs that meet different eligible program definitions. For example, a school that offers a bachelor's degree program (qualifying the school as an institution of higher education) may also offer a certificate or diploma training program that is eligible under a definition that qualifies the school as a postsecondary vocational institution.

Types of eligible programs at an institution of higher education

A school qualifies as an institution of higher education if (in addition to meeting all other eligibility requirements, including being a nonprofit school) it offers a program that leads to an associate, bachelor's, professional, or graduate degree. For such programs, there are no minimum program length requirements.

A school may also qualify as an institution of higher education if it offers a program of at least two academic years in duration that is acceptable for full credit toward a bachelor's degree, or if it offers a program of at least one academic year in duration that leads to a certificate, degree, or other recognized credential and prepares students for gainful employment in a recognized occupation.

Types of eligible programs at a proprietary or postsecondary vocational institution

Three types of eligible programs will qualify an otherwise eligible school as 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.

1) 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.

2) 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

Recognized Occupation

A recognized occupation is one that is listed in the "occupational division" of the most recent edition of the Dictionary of Occupational Titles (published by the U.S. Department of Labor) or one that is considered by the Department, in consultation with the Department of Labor, to be a recognized occupation.

students only persons who have completed the equivalent of an associate degree.

3) The third type of program is known as the *short-term program*. A short-term program qualifies for the FFEL and Direct Loan programs 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. Short-term programs must also satisfy qualitative factors for completion rates, placement rates, program length, and period of existence of the program. Specifically, these programs must:

- have verified completion and placement rates of at least 70%,
- 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.

For the purpose of demonstrating compliance with these qualitative factors, a school must calculate the completion and placement rates for the award year, as explained later. The CPA who prepares the school's compliance audit report must attest to the accuracy of the school's calculation of completion and placement rates.

Completion Rate Calculation

Number of regular students who received credential for successfully completing the program within 150% of the length of the program

Number of regular students enrolled for the year
- number of regular students who withdrew with a 100% refund
- number of regular students enrolled at the end of the year

* less any permitted administrative fee

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.

Placement Rate Calculation

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 students who received credential for successfully completing the program

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

Exceptions to eligible program definition

Note that there are two cases (certain types of preparatory coursework and teacher-certification programs) where students may receive FFEL or Direct Loan funds for enrollment in a program that does not meet the eligible program definition. (For more information, see *Volume 1 — Student Eligibility*.)

WEEKS OF INSTRUCTION AND THE 12-HOUR RULE

Week of instructional time/week of instruction is used in determining:

1. program eligibility (measuring program length);
2. academic year length;
3. award limits in the Pell program (formulas three and four);
and
4. the frequency of awards in the Direct Loan and FFEL programs.

Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

Week of instruction/instructional time

For standard term programs (credit hour programs using a semester, trimester, or quarter system) and for clock hour programs a week of instructional time must contain within a consecutive seven-day period:

- at least one day of regularly scheduled instruction or examinations; or
- after the last scheduled day of classes for a term, at least one day of study for final examinations.

For nonterm and nonstandard term credit hour programs using credit hours but not offered in a semester, trimester, or quarter system), a week of instructional time must contain at least 12 hours:

- of regularly scheduled instruction or examinations; or
- after the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

This requirement is commonly known as the 12-hour rule.

Program Eligibility Minimum Weeks and Hours

As discussed previously, certain programs are required to have a minimum number of weeks of instruction. Consider a nonterm or nonstandard term program of 16 semester hours meeting over the required minimum 15 calendar weeks. Since each of those weeks must contain at least 12 hours of instruction, the program must contain at least 180 hours of instructional time (15 weeks times 12 hours per week). A school that wants to set its program to be only 15 calendar weeks long would therefore have to meet an average of 12 hours per week for the 15 calendar week period in order for the program to be eligible.

The Department allows flexibility in the application of this rule. If a program does not include at least 12 hours of instruction in each week, it may still be an eligible program if the total number of hours in the program is equal to or greater than the required number of weeks times 12 hours. For example, a program that included only six hours of instruction per calendar week would have to meet for 30 calendar weeks in order contain 15 weeks of instructional time (30 calendar weeks times 6 hours per week = 180 hours of instructional time).

Note that a program that contained 20 hours a week of instruction would not qualify as an eligible program if it were offered over only 9 calendar weeks. Even though the program would contain the minimum number of hours of instruction (180) it would not satisfy the 15 calendar-week requirement.

Treatment of holidays

Because the 12-hour rule does not require a school to offer instruction, examinations, or preparation for examinations on specific days, an institution may not include a holiday in these calculations unless regularly scheduled instruction, examinations, or preparation for examinations occurs on that day.

ADDITIONAL ELIGIBILITY REQUIREMENTS

There are additional SFA program eligibility requirements placed on 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. Certain telecommunications courses may be considered correspondence courses and therefore may be subject to the same requirements.

ESL Programs

A program that consists solely of English as a Second Language (ESL) instruction is eligible only for Pell Grant participation. 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 and 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 may request from the Department an eligibility determination for an ESL Program.

A student also may receive SFA program funds for ESL coursework that is part of a larger eligible program. In this case, the ESL coursework is treated as remedial coursework. For more information, see *Volume 1 — Student Eligibility*.

Study abroad programs

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

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

The study abroad program 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 study abroad program must meet the requirements of consortium and contractual agreements (see chapter 9). Moreover, in the information it provides to students about

a study abroad program, an institution must inform students about the availability of SFA program assistance.

Flight schools

Under the FFEL programs, a flight school program must maintain current valid certification by the Federal Aviation Administration to be eligible.

CLOCK HOUR/CREDIT HOUR CONVERSIONS

If a school offers an undergraduate program in credit hours, unless

- the program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or
- each course within the program is acceptable for full credit toward that school's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study;

the school must use a clock hour/credit hour conversion formula to determine whether the undergraduate program qualifies as an eligible credit hour program for SFA purposes.

First, the school would determine the number of clock hours of instruction in each semester of the program. Then, the school would apply the appropriate conversion formula to determine the number of credit hours in each semester. Third, the school would evaluate the eligibility of the program. Finally, the school would determine the eligibility of a student in the program for SFA program funds based on the number of credits arrived at through the application of the formula.

Note that the exemption for programs that lead to a degree that is equivalent to an associate, bachelor's, or professional degree program of at least two years does not permit a school to ask for a determination that a *nondegree* program is equivalent to a degree program.

Also, public or private nonprofit hospital-based diploma schools of nursing are exempt from using the clock-to-credit hour conversion formula to calculate awards for the SFA programs.

Clock Hour/Credit Hour Conversion Example

Sternberg University (SU) states that a two-year nondegree program measured in semester credit hours is 16 credit hours per semester. Courses within the program are not creditable toward a degree at SU.

SU determines that there are 330 clock hours in the first and second semesters, and 390 in the third and fourth semesters. By applying the conversion formula, the school determines that the number of credit hours for SFA purposes is 11 for the first two semesters, and 13 for the last two semesters.

$$\frac{330 \text{ clock hours}}{30} = 11 \text{ credit hours}$$

$$\frac{390 \text{ clock hours}}{30} = 13 \text{ credit hours}$$

Total clock hours in the program are 1440. Because the program is longer than 15 weeks and contains more than 600 clock hours of instruction, it remains an eligible program, provided it is otherwise eligible (see page 1-15). However, for the first two semesters of the program, students are eligible for payment for only 11 credit hours of instruction. Because this is less than the full-time student minimum of 12 credit hours, students who attend the first two semesters are eligible to be paid for only three-quarter time attendance.

To determine the number of credit hours in a program for SFA purposes, schools must use the appropriate formula.

For a semester or trimester hour program:

$$\frac{\text{Number of clock hours in the credit-hour program}}{30}$$

For a quarter hour program:

$$\frac{\text{Number of clock hours in the credit-hour program}}{20}$$

The school must use the resulting number of credit hours to determine if a program is eligible under the eligible program requirements explained under *Types of eligible programs at a proprietary or postsecondary vocational institution*. For a program to qualify as eligible by providing at least 16 semester or trimester credit hours or 24 quarter credit hours, the program must include at least 600 clock hours of instruction. For a program to qualify as eligible by providing at least 8 semester or trimester credit hours or 12 quarter credit hours, the program must include at least 300 clock hours of instruction. Excused absences are not included in the formula.

Because the results of these formulas determine the eligibility of a program, the resulting number of credit hours may not be rounded upward.

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 SFA funds that a student who is enrolled in the program is eligible to receive under the Pell Grant, FFEL, and Direct Loan programs. If, after applying the formula, the number of credit hours in the program has decreased, a student's enrollment status could change, resulting in a decrease in SFA eligibility for these programs.

A student's period of attendance is measured according to 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. The result would be that seven hours of consecutive instruction would count as 8.4 clock hours (420 minutes ÷ 50 minutes = 8.4 hours). Seven real-time attendance hours may not count for more than seven clock hours.

FOREIGN SCHOOLS ELIGIBLE FOR FFEL PROGRAMS

In general, by law, a foreign school can participate in the FFEL programs 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. The Amendments of 1998 as implemented in regulations published October 29, 1999 added special eligibility provisions for foreign veterinary schools.

Foreign medical schools

To be eligible for FFEL participation, a foreign medical school must meet the same requirements as other foreign schools and must also

- provide, and require its students to complete, a medical program of clinical and classroom instruction not less than 32 months long that is supervised closely by members of the school's faculty and that is provided either
 - a) Outside the U. S., in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or
 - b) In the U. S., through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Department;
- have graduated classes during each of the two years preceding the school's application for eligibility;
- for the above-mentioned medical program, employ only faculty members whose credentials are equivalent to the credentials of faculty teaching similar courses in U.S. medical schools; and
- for a public or private nonprofit school, be accredited by a recognized agency, or for all other schools, by an authorized agency whose standards have been determined by a panel approved by the Department to be comparable to U.S. standards of accreditation for medical schools.

In addition, the law specifies the following requirements for foreign medical schools:

- at least 60% of the full-time regular students enrolled in the previous year and 60% of the most recent graduates must be other than U.S. citizens or nationals, permanent residents, or eligible noncitizens of the United States, and

Foreign Medical School Cites

Sec 102(a)(2)
34 CFR 600.51

Foreign Medical School:

A school that is not located in a state, and is qualified and listed as a medical school in the most current World Directory of Medical Schools, published by the World Health Organization (WHO)

- at least 60% of the students and graduates (for the past three years) who took any step of an exam from the Educational Commission for Foreign Medical Graduates (ECFMG)—including the ECFMG English test—in the previous year must have received a passing score.

A school not meeting all the 60 percent requirements can still be eligible if:

- the school’s clinical training program was approved by a state as of January 1, 1992 and is currently approved; or
- the school’s students complete their clinical training at an approved medical school located in the United States (this provision was added by the Amendments of 1998).

Continued eligibility is dependent upon annual submission of the data and information that demonstrates compliance with these 60% requirements (or the exception).

Exception: A student who was continuously enrolled at the school before the school lost eligibility, may receive an FFEL program loan for attendance at that school for the following academic year if the student received an FFEL program loan while in attendance at the school while it was eligible.

Criteria for determining whether a foreign veterinary school is eligible to apply to participate in the FFEL programs:

A foreign veterinary school is eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria for foreign medical schools (except the criterion that the school be public or private nonprofit), either

- the veterinary school’s clinical training program was approved by a state as of January 1, 1992 and is currently approved by that state; or
- the veterinary school’s students complete their clinical training at an approved veterinary school located in the U. S.

REPORTING INFORMATION ON FOREIGN SOURCES

Federal law requires certain postsecondary schools (whether or not the school is eligible to participate in the SFA programs) to report ownership or control by foreign sources. Federal law also requires these postsecondary schools to report contracts with or gifts from the same foreign source that, alone or combined, have a value of \$250,000

Foreign School Reporting Cite
Sec. 117

3. 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.

Contract Defined

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

Gift Defined

Any gift of money or property

or more for a calendar year. These reports must be filed with the Department by the 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.

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.

Contents of disclosure report

Each disclosure report to the Department must contain

- for gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of the gifts and contracts attributable to a particular country;³
- in the case of a school that is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control;
- for gifts received from or contracts entered into with a foreign government, the aggregate amount of the gifts and contracts received from each foreign government;
- for restricted or conditional gifts received from or restricted or conditional contracts entered into with a foreign source (other than a foreign government), the amount, date of receipt of the gift or date of the contract, and description of the conditions and restrictions; and
- for restricted or conditional gifts received from, or restricted or conditional contracts entered into with a foreign government, the amount, the date of receipt of the gift or date of the

Restricted or conditional gift or contract:

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*

contract, a description of the conditions or restrictions, and the name of the foreign government.

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.

Where to report foreign gift information

Foreign Gift information must be sent to Case Management and Oversight using the electronic application. The specific information about foreign gifts must be reported in question 69 (section K).

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.

All information provided by schools under this law is open to inspection and duplication by members of the public.

SOLOMON-POMBO AMENDMENT

The Solomon-Pombo Amendment was enacted on September 30, 1996, as part of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208). This amendment provided that federal funds could not be made available by contract or by grant to schools that were found to have denied or restricted access to military recruiters, or to have denied or restricted the establishment, maintenance, or efficient operation of a Senior Reserve Officer Training Corps (ROTC) unit.

At the end of October 1999, language was added to the Defense Department's fiscal-2000 spending bill that exempts student aid from those federal funds that can be cut off by the act. Therefore, the Solomon-Pombo act no longer affects student aid programs.

