

*In this chapter we discuss the oversight responsibilities of accrediting agencies, states, and the Department. This oversight is necessary to ensure the integrity of the FSA programs.*

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## STATE AND ACCREDITING AGENCY ROLES

Part H of the HEA prescribes requirements for ensuring the integrity of the FSA programs. In addition to the oversight responsibilities of the federal government, states and accrediting agencies play a part in overseeing a school's operations.

### State role

The Higher Education Amendments of 1998, Public Law 105-244 (the Amendments of 1998) officially repealed the State Postsecondary Review Program and replaced it with a subpart on the state role. The law now requires that each state (through at least one state agency):

- 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.

### Accrediting agency role

The law establishes the general requirements for the recognition of accrediting agencies. One of these requirements states that an accrediting agency must meet criteria established by the Department. These criteria, which are found in 34 CFR 602 allow the Department to determine whether it believes an accrediting agency to be a reliable authority on the quality of education offered by a school.

An accrediting agency can be recognized for institutional or programmatic accreditation. An institutional accrediting agency accredits the entire school. A programmatic accrediting agency

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#### State role cite

Subpart 1 of part H of the HEA

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#### Accrediting agency role cite

Subpart 2 of part H of the HEA

accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

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 (see list of changes by the Amendments of 1998 below);
- 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.

The Amendments of 1998 clarify that the Department recognizes rather than approves accrediting agencies. The Amendments also clarify that the Department establishes criteria, rather than standards, for such recognition. The following are some of the changes to the statutory accreditation requirements:

- To qualify as a nationally recognized accrediting body, an agency must apply and enforce standards for accreditation that ensure that distance learning courses of study at a school are of sufficient quality to achieve their stated objectives for the duration of the school's accreditation period.
- To be a nationally recognized agency, an agency is required to have standards for assessing a school. The Amendments alter the list of required standards by deleting the consideration of program length and tuition and fees in

relation to subject matter taught, and now require that the agency standards consider *measures of program length* and the objectives of the degree or credential offered.

- The requirements for unannounced site visits by an accrediting agency are changed from requiring at least one visit at schools providing vocational education and training to authorizing, but not requiring, unannounced site visits at any school.
- More detailed procedures are provided for the Department to follow in making determinations concerning the limitation, suspension, or termination of an agency's recognition as a nationally recognized accrediting agency.
- Requiring a school to agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to *initial* rather than *binding* arbitration.

## THE DEPARTMENT'S ROLE

One of the Department's functions is to oversee the FSA programs to ensure that they are administered properly. In this chapter we discuss the two major types of oversight review, audits and program reviews, that are conducted at schools that participate in the FSA programs. This chapter also includes information on requirements when a school's eligibility or participation ends and information on corrective actions and sanctions.

If in a program review or audit a school is identified as having improperly disbursed FSA program funds, the school must restore those funds as appropriate. Program reviews and audits are not conducted solely to recover funds, but also to identify procedural problems at the school and recommend solutions.

If a school is cited for fraud or other serious program abuses in a program review or audit, the school may be subject to corrective action and sanctions, such as fines, emergency action, or limitation, suspension, or termination, which are discussed later in this chapter.

### *Your comments are important*

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 will annually 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).

Audit requirements for schools

Audit requirements for schools cite

Sec. 497(c)(1)(A)  
34 CFR 668.23(a)(1)  
34 CFR 668.23(a)(5)

Independent auditor

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

The law requires that a school that participates in any FSA program, including participating foreign schools, must have an independent auditor conduct, at least once a year, an audit of a 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 financial responsibility (see chapter 4).

As in the past, schools can meet these audit requirements by having an audit performed under the guidelines of the Department’s *Audit Guide, Audits of Federal Student Aid Programs at Participating Institutions and Institutions Services* or, if applicable, by having an audit performed under the guidelines of the Office of Management & Budget (OMB) Circular (A-133), *Audits of States, Local Governments, and Nonprofit Organizations*. A-133 Audits are discussed under *Types of Audit Guidelines*.

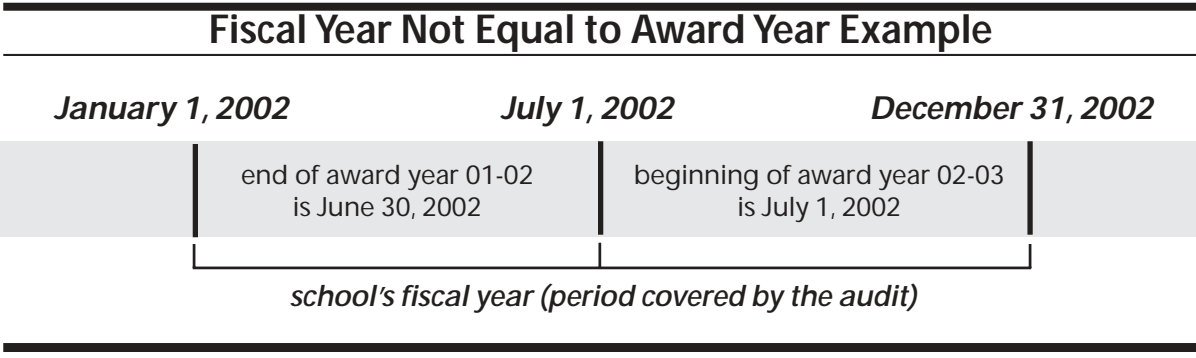
Simultaneous audit submissions

Audit submission cite

34 CFR 668.23(a)(4)

A school that has an audit performed under the FSA Audit Guide must submit **both** the compliance audit and the audited financial statements within six months of the end of the school’s fiscal year. Both the compliance audit and the financial statement audit must be performed on a fiscal-year basis. In addition, both audits must be prepared in accordance with Generally Accepted Accounting Principle (GAAP) and 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.

The compliance audit of a school that has a fiscal year that does not coincide with an award year will cover parts of two award years (see the example below).



The definition of an independent auditor makes clear that the compliance and financial statements audits submitted under these regulations must be performed by independent public accountants (IPAs) or by government auditors who meet certain governmental standards.

The Amendments of 1998 created an exception to the annual audit requirement. A school may request a waiver that, if approved, will require the school to submit a compliance audit (covering each fiscal year in the waiver period) and a financial statement audit (for the last year of the waiver period) every three years at the Department's discretion.

The amended regulations do **not** waive the requirement that an institution audit its administration of the Title IV, HEA programs; they waive the requirement that these audits be submitted on an annual basis. Therefore, if an institution is granted a waiver for three years, when the waiver period expires and the institution must submit its next compliance audit, that audit must cover the institution's administration of the Title IV, HEA programs since the end of the period covered by its last submitted compliance audit. The auditor must audit and attest to the institution's annual determination (for the waived periods) that the institution met the 90/10 requirement of 34 CFR 600.5 and the conditions of institutional eligibility in 34 CFR 600.7 and 34 CFR 600.8(e)(2).

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

- disbursed less than \$200,000 in FSA program funds during each of the two completed award years prior to the audit period;
- is not a foreign institution;
- 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 Title IV, HEA 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 Title IV, HEA programs;
- is not on the reimbursement or cash monitoring system of payment;
- has not been 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 Secretary 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 Title IV, HEA program funds the school disbursed to or on behalf of its students during the award year preceding the school's waiver request.

The Secretary rescinds a waiver if the school:

- disburses \$200,000 or more of Title IV, HEA 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.

This exception to the annual audit requirement may not be granted for the award year preceding a school's required recertification. Furthermore, this exception does not apply to foreign schools.

***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, a school's fiscal year coincides with an award year. It submits a compliance audit for its fiscal year that ends on June 30, 2000, and then receives a waiver so that its next compliance audit is due six months after the end of its 2002-2003 fiscal year. When it submits that audit, it must cover the 2000-2001, 2001-2002, and 2002-2003 fiscal years.

***Example 2:*** If a school's fiscal year is based on an award year (July 1 – June 30), and the school requests a waiver on May 1, 2000, that waiver request may include its 1999-2000 fiscal year (July 1, 1999 through June 30, 2000) plus its 2000-2001 and 2001-2002 fiscal years. If the school's fiscal year was a calendar year, the school's waiver request could include its calendar 2000 fiscal year plus its 2001 and 2002 fiscal years.

In the later example, the waiver would not include the school's 1999 fiscal year, and therefore the school would be required to submit its compliance audit and audited financial statement to the Department by June 30, 2000.

If the Secretary 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.

An institution's waiver request may include the fiscal year in which that request is made, plus the next two fiscal years. That request may not include an already completed fiscal year.

An institution remains liable for repaying any Title IV, HEA program funds it improperly expends during the waiver period. A compliance audit is the vehicle for discovering improper expenditures. Therefore, an institution will be required to pay any liabilities when the institution eventually submits a compliance audit for the fiscal year in which it made improper expenditures.

The Office of Inspector General (OIG) also conducts audits, usually in cases where there may be concern over the 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 IPA.

### *Types of audit guidelines*

As mentioned previously, in lieu of audits performed under the FSA Audit Guide, some schools are required to have audits performed under the guidelines of the Single Audit Act (chapter 75 of Title 31, U.S.C.). Audits performed under the Single Audit Act also satisfy the Department's audit requirements.

The type of audit a school or servicer must undergo depends on its method of control: public, for-profit, or nonprofit. All for-profit schools must comply with the audit requirement by having an FSA compliance audit under the criteria of the Department's FSA Audit Guide. All public and nonprofit schools must comply with the Single Audit Act, which requires these schools to have an audit performed in accordance with Office of Management and Budget's (OMB) Circular A-133. (Circular A-133 allows an FSA compliance audit under the criteria of the Department's Audit Guide under limited circumstances.)

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

**<http://www1.whitehouse.gov/WH/EOP/OMB/html/circulars/a133/a133.html>**

or by calling OMB's Publication Office at

**(202) 395-7332.**

Audits performed under the Single Audit Act have distinct auditing and submission requirements. A school submitting an audit under the guidelines of the Single Audit Act must use the submission deadlines established by the Single Audit Act.

Under the requirements of Circular A-133, a school that expends less than \$300,000 of federal funds during a fiscal year is exempt from submitting an annual A-133 audit. However, if such a school has either audited or unaudited financial statements, the Department may request them.

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 determine, within the scope of professional judgment, whether certain federal programs must be included the scope of the audit. An independent auditor must exclude certain program components, such as Title IV 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 Title IV programs must be included within the scope of the audit. You can find additional information on this topic in the *2002 Compliance Supplement* to Circular A-133.

### ***Submission dates for FSA audits***

A school's or servicer's annual compliance and financial statements audits performed under the FSA 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. (Again, these requirements do not apply to audits performed under the Single Audit Act that are due as specified in OMB Circular A-133.)

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#### **Submission dates cite**

34 CFR 668.23(a)(4)



The chart that follows lists audit due dates and what period the audit must cover for audits due in 2000 and 2002 (this chart provides information for the most common institutional fiscal-year-end dates).

<b>Audit Submission Due Dates for 2003 and 2004</b>					
<i><b>School's fiscal year end date</b></i>	<i><b>Both audits due</b></i>	<i><b>Period audited (financial and compliance)</b></i>	<i><b>School's fiscal year end date</b></i>	<i><b>Both audits due</b></i>	<i><b>Period audited (financial and compliance)</b></i>
September 30, 2002	March 31, 2003	October 1, 2001 through September 30, 2002	September 30, 2003	March 31, 2004	October 1, 2002 through September 30, 2003
December 31, 2002	June 30, 2003	January 1, 2002 through December 31, 2002	December 31, 2003	June 30, 2004	January 1, 2003 through December 31, 2003
March 31, 2003	September 30, 2003	April 1, 2002 through March 31, 2003	March 31, 2004	September 30, 2004	April 1, 2003 through March 31, 2004
June 30, 2003	December 31, 2003	July 1, 2002 through June 30, 2003	June 30, 2004	December 31, 2004	July 1, 2003 through June 30, 2004

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.

### ***Compliance audit submission requirements***

Compliance audits must be conducted in accordance with:

- the general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards; and
- applicable audit guides from the Department's Office of the Inspector General.

In conducting an audit, a for-profit school or servicer and its auditor should use the Department of Education's latest FSA Audit Guide, the accounting and recordkeeping manual for the FSA programs (known as The Blue Book), and the *GAPS Users Guide*, as applicable.

The FSA Audit Guide is available on the Internet at:

**<http://www.ed.gov/offices/OIG/nonfed>**

The Gaps Users Guide is available at

**<http://gapsweb.ed.gov>**

The independent auditor or auditing firm the school or servicer uses for its required non-federal audit may be the same one that usually audits the school's or servicer's fiscal transactions. To produce unbiased conclusions, the auditor must be independent of those authorizing the expenditure of FSA program funds.

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

### ***Financial statement audit submission requirements***

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 financial responsibility (see chapter 4). 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 accountant'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.

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 audit guides from the Department's Office of the Inspector General, as applicable.

### ***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 statement; 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 identify readily 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.

### *Required disclosure of 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 calculation of this percentage and the funds included must be arrived at using the **cash basis of accounting**. Guidance on footnote disclosure can be found in the FSA Audit Guide, and in 34 CFR 600.5, and in appropriate accounting references. Information regarding the calculation of this percentage (the *90/10 Rule*) is found in chapter 1.

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#### **90/10 Rule cite**

34 CFR 600.534 and  
34 CFR 668.23(d)(4)

### *Audits for foreign schools*

Foreign schools must also submit an annual compliance audit and audited financial statement. However, because financial responsibility requirements vary for foreign schools based on the amount of FSA program funds received by the school, the requirements for preparation of the financial statement also vary. A school that received less than \$500,000 (in U.S. dollars) in FSA program funds during its most recently completed fiscal year may have its audited financial statements prepared according to the standards of the school's home country. A foreign school that received \$500,000 or more in FSA program funds during its most recently completed fiscal year must have its audited financial statement translated and presented for analysis under GAAP and GAGAS. See chapter 4 for more information on financial responsibility determinations for foreign schools.

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#### **Audit of foreign school cite**

34 CFR 668.23(d)(3)

### *Audits for third-party servicers*

There are also annual audited financial statements and compliance audit requirements for third-party servicers. A third-party servicer must submit an annual compliance audit. However, if a servicer contracts with only one FSA school and that school's own audit sufficiently covers all the functions performed by the servicer, the servicer does not have to submit a compliance audit. If a servicer contracts with several FSA schools, a single compliance audit can be performed that covers all its administrative services for each school. 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.

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#### **Third party servicers cite**

34 CFR 668.23(a)(3) and (c)  
34 CFR 668.23(d)(5)

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.

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*.

If the Department determines that, based on audit findings and responses, a third-party servicer owes a liability for its administration of the Title IV programs, the servicer must notify each institution that it contracts with 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.

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 2 for more information on third-party servicers.)

### ***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 8.) 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.

### ***Submitting audits***

The school or servicer must submit four copies of the combined Financial Statement and Compliance Audit Report Package and the school's or servicer's Corrective Action Plan (CAP) to the Department's Data Management and Analysis Division at the following address:

**U.S. Department of Education  
Case Management and Oversight  
Data Management and Analysis Division  
Document Receipt and Control Center  
830 First Street, NE  
Room 71-I-1  
Washington, DC 20002- Package 5042**

**Phone: (202) 377-3630 (for this purpose)**

**A-133 audits must be submitted to the:**

**Federal Audit Clearinghouse  
Bureau of the Census  
P.O. Box 5000  
Jeffersonville, Indiana 47199-5000**

The Federal Audit Clearinghouse will process the A-133 audits for the Department. Although the OIG is not the submission point for these audits, the OIG will provide technical assistance on these audits to schools and auditors.

For an audit performed under the Department's FSA Audit Guide, the Department reviews the audit report for format, completeness, and to ensure that it complies with the government's auditing standards.

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 any records or other documents necessary to review the audit. A school that uses a third-party servicer must also give the Department and the OIG access to records or other documents necessary to review a third-party servicer's compliance or financial statements audit. In addition, the school's or servicer's contract with the auditor must specify that the auditor will also 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.

**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, the appropriate guaranty agency and accrediting agency.**

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**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.

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**Access and examination cite**  
34 CFR 668.24(f)

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## Applicability

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

You can find everything you need to know about it on IFAP at

<http://ifap.ed.gov>

We will also post a step-by-step User Reference Manual on IFAP to assist in the transition to eZ-Audit. If you have questions please consult IFAP or send an E-mail to

[fsaezaudit@ed.gov](mailto:fsaezaudit@ed.gov)

## eZ-AUDIT

As this volume was going to press, the Department was preparing to implement eZ-Audit, a new Web-based process that will provide schools with a paperless single point of submission for financial statements and compliance audits. eZ-Audit will eliminate the cost of duplicating and mailing the reports, and expedite their review by the Department. In addition, eZ-audit will afford more timely and useful information to institutions by allowing schools to review their data and the status of their reports at any time.

The eZ-Audit system will not require schools to submit **additional** information. Schools will be asked to enter information from their audit and attach a copy of their audit and their audited financial statement as a PDF file. In addition, where possible we will pre-populate demographic data elements from information previously reported. Like the FISAP, the eZ Audit system will automatically check for errors before you submit the data. Finally, the system will eliminate lost reports, and will give you an immediate receipt.

Once eZ-Audit has been implemented, your school will need to submit all required FSA audits to FSA electronically (including copies of A-133 audits filed with the Federal Audit Clearinghouse) through the eZ-Audit process. Please note that nonprofit and public institutions will continue to submit these annual audits to the Federal Audit Clearinghouse as well.

## The eZ-Audit process

To submit an audit you will use a special school ID to access the appropriate page on the audit-Audit Web site. Then you will:

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.

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 make a preliminary determination as to whether your school is financially responsible with respect to the financial responsibility ratios under Subpart L of the General Provisions regulations (or in the case of a change in ownership resulting in a change in control, whether the institution satisfies the financial ratio requirements under 34 CFR 668.15).

## Attaching an authentic copy of the audits

After you've entered all required information, you must attach an electronic copy of the audits prepared and signed by the independent auditor. The copy must be in a PDF, read-only format created using Adobe Acrobat version 5.0 or higher.



## PROGRAM REVIEWS

In addition to reviewing audits, the Department conducts its own program reviews to identify possible problems in a school's FSA administration. A program review covers many of the same areas as an audit, 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 tend to focus more on regulatory requirements that are specific to the FSA programs. For example, the program review team will examine student records and admissions records, fund requests and transfers, records pertaining to due diligence and the collection of Federal Perkins Loans, time sheets and pay rates for the Federal Work-Study (FWS) Program, and documents related to the reporting process for the Federal Pell Grant and campus-based programs.

### *Selection of schools for review*

The Department gives priority in program reviews to schools that meet certain criteria. Prior to the Amendments, the law stated that the Department was permitted, but was not required, to give priority to schools that met the criteria specified in the law. These criteria (as modified by the Amendments where noted) are that:

- a school has a cohort default rate in excess of 25% or a rate that places the school in the highest 25% of such schools;
- a school has a default rate in dollar volume that places the school in the highest 25% of such schools;
- a school has a significant fluctuation in Federal Stafford Loan volume, Direct Stafford Loan volume, or Federal Pell Grant awards, that is not accounted for by changes in the programs (the Amendments clarified that significant fluctuations in amounts of aid received by schools are those that do not relate to programmatic changes and added Direct Loans to the list of 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 failure to comply with the administrative capability or financial responsibility requirements. (The Amendments more clearly defined the other institutions that the Secretary may target for program reviews as those that pose a significant risk of failure.)

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.

Any civil penalties arising from a program review or audit will be based upon the gravity of the violation.

### *Written report*

After the Department performs a program review of a school, the program review team prepares a written report that 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 conclusions. When the Department has fully considered the school's response and all issues have been resolved, the Department official will send a copy of the final program review determination to the school.

It may occasionally be necessary for Department officials to perform an unannounced program review. The General Provisions regulations stipulate that Department officials provide a school with a written request for a program review, but do not preclude the Department from providing such a request at the time the reviewers arrive at the school.

In an unannounced program review, the Department reviewers will present a written request to school officials before beginning the review. The school is expected to have its records organized and readily available, without objection to providing access to those records. However, because certain school officials may not be immediately available during the review, the school may be afforded additional time to submit information regarding the review findings. The Department has regulatory authority to take an emergency action if a school denies access to the reviewers performing an unannounced program review (see discussion under emergency action). School officials will be informed if an emergency action is to be taken.

## **GUARANTY AGENCY REVIEWS**

The FFEL Program regulations also require guaranty agencies to conduct program reviews at postsecondary schools. A guaranty agency must conduct biennial (once every two years) on-site reviews of **at least all schools** for which it is the principal guaranty agency *that have a cohort default rate for either of the two preceding fiscal years that exceeds 20%*. Schools that the Department requires to take specific default reduction measures and schools where the total amount of loans entering repayment in each of those fiscal years does not exceed

\$100,000 are exempted. Alternatively, a guaranty agency may use its own criteria to select schools for the biennial on-site reviews if the Department approves the agency's proposed alternative selection methodology. A program review conducted by a guaranty agency is similar to a Department program review, consisting of an entrance interview, a review of student records, an exit interview, and a written report. However, the guaranty agency's review will focus on how the school meets FFEL-specific requirements, such as the following:

- certification of the loan application;
- maintenance of records supporting the student's loan eligibility;
- processing procedures and payment of loan monies; and
- prompt lender notification when the student changes enrollment status, such as complete withdrawal.

Two copies of the guaranty agency's report are forwarded to the Department, including the school's payment if liabilities were assessed.

## 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* (FAD) and explains the appeals procedures. For a program review, the final determination letter is marked *Final Program Review Determination Letter*.

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### Appeals cite

34 CFR 668.34, Subpart H

If a school or servicer wants to appeal an audit or program review determination, it must appeal, in writing, to the Departmental official identified in the determination within 45 days after it receives the final determination. If the school or servicer makes such a request, the determination will be reviewed by an impartial hearing official appointed by the Department. In most cases, an oral hearing will not be required. The school or servicer and the Department must submit briefs with any accompanying materials to the official, and provide the other party with a copy of its submission at the same time. If the final decision is appealed by either party, the Secretary will review it.

If the hearing official (or the Secretary) finds that the school or servicer improperly expended funds or otherwise failed to comply with applicable program rules and requirements, the Department will collect the liability owed, if any. The school or servicer must repay the funds within 45 days of the Department's notification of the liability, unless the Department grants an extension. At its option, the Department may elect to use an administrative offset to collect the funds owed.

## REQUIREMENTS WHEN A SCHOOL CEASES TO BE AN ELIGIBLE INSTITUTION

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.

In general, a school that ceases to be eligible must notify Case Management and Oversight within 30 days of its loss of eligibility to participate in the FSA programs. Requirements for notifying the Department are in 34 CFR 600.40.

### *Loss of 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 Application 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.

## REQUIREMENTS WHEN A SCHOOL'S FSA PARTICIPATION ENDS

A school may stop participating in the FSA programs voluntarily or it may be required to leave involuntarily. In either situation, there are required closeout procedures to follow.

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 10 for information on reporting information to the Department.

## 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 case management team.

**Note:** 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 voluntary withdrawal.**

## 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);

**Note:** 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 programs, the school should make arrangements for its students to complete their programs. If the school chooses to enter into a formal teachout arrangement, the school should contact the appropriate case management team for guidance.

- the school loses its accreditation;
- the school loses its state licensure;
- the school loses its eligibility;
- 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.

### *When participation ends*

When a school's participation in an FSA program ends—for whatever reason—the school must immediately notify the Department and 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 required by each appropriate FSA program regulation, as well as a dated letter of engagement for an audit by an independent public accountant (IPA) 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 34 CFR 668.24) all records concerning the school's management of the appropriate FSA programs (see chapter 8).
- tell the Department how the school will provide for collecting any outstanding FSA program student loans held by the school.
- refund students' unearned Title IV student assistance (see chapter 6).

### *Additional closeout procedures*

In addition, a school that closes must refund to the federal government or, following written instructions from the Department, otherwise distribute any unexpended FSA program funds it has

received (minus its administrative cost allowance, if applicable). The school must also return to the appropriate lenders any loan proceeds the school received but has not disbursed to students. If the school's participation in the Leveraging Educational Assistance Partnership (LEAP) Program ends, the school must inform the state and follow the state's instructions.

If a school's participation ends during a payment period (or enrollment period for FFEL Programs), 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 program 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;

**Note:** The school may request additional funds from the Department to meet these commitments.

- satisfy any unpaid FFEL commitments made to students for that period of enrollment by delivering subsequent FFEL disbursements to the students or by crediting them to the students' accounts (only if the first disbursement already was delivered or credited before the school's participation ended);
- use the FSA program 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:** The school may request additional funds from the Department to fulfill this commitment.

If you need additional information, contact the staff of the Department's appropriate regional office for guidance in fulfilling these requirements and responsibilities.

## CASE MANAGEMENT

Case management is the Department's approach to oversight of schools that participate in the FSA programs. Case management is designed to provide the Department with a thorough picture of a school's overall compliance through the use of Case Teams.

Case Management and Oversight (CMO) has case teams staffed by personnel in the regions and in Washington, DC. Each team is assigned a portfolio of schools. The team is responsible for all oversight functions for the schools in its portfolio. These functions include audit resolution, program reviews, financial statement analysis, and recertification. In addition, in January 1998, the Department announced the addition of Institutional Improvement Specialists for each case team (see DC-GEN-98-4). The Institutional Improvement Specialists are responsible for compliance improvement. They seek to improve compliance by offering targeted technical assistance and presentations on important Title IV topics. In addition, school personnel can download FSAs Web-based self improvement tools from

**<http://qaprogram.air.org.about.html>**

Each school is assigned a case manager who leads the team in its evaluation of that school. The entire team will evaluate information on the school from a variety of sources to identify any compliance problems 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.

Case 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.

### ***Possible actions***

A case team may decide to take actions that include, but are not limited to

- reviewing recertification or awarding only provisional certification,
- initiating a program review,
- establishing liabilities,



- developing a strategy for providing technical assistance,
- transferring the school to the reimbursement payment method (see chapter 5),
- requiring a letter of credit, and
- referring the school for an enforcement action.

Actions do not always have to be negative. For example, the case team can recommend a school for participation in the Quality Assurance Program (see chapter 10).

The Department will use a system of risk analysis as well as other tools to identify schools with the greatest need for oversight. The Department will use analysis by various Department data systems to generate a risk score for a school. This will enable the Department to target resources to those schools that present the highest risk to the government.

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 case management teams, see the chart at the end of this chapter or call the Customer Service Call Center at (800) 433-7327.)

## CORRECTIVE ACTIONS AND SANCTIONS

### *Administrative subpoena authority*

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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#### **Administrative subpoena authority cite**

Sec. 490A

### *Sanctions*

Sanctions include emergency actions, fines, limitations, suspensions, and terminations.

The Department will sanction any school that:

- violates the law or regulations governing the FSA programs, its PPA, 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 7.

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 chapter 2).

### *Actions due to program violations or misrepresentation*

If it appears that a school has violated the FSA program requirements, the Department may allow the school to respond to the problem and indicate how it will correct it. If this informal approach fails to correct the situation, or if the school has repeatedly violated the law or regulations, the Department may take emergency action, fine the school, or initiate a limitation, suspension, or termination of FSA program participation.

In addition, the Department has the authority to terminate a school or program that no longer meets the eligibility criteria given in chapter 1. 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.

### *Emergency action*

The Department may take 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 \$25,000 for each statutory or regulatory violation. (The Department first notifies the school of its intent to fine so the school can, if it chooses, request a hearing.) If the school is found guilty of any violations, it may appeal to the Department for a compromise on the amount of the fines imposed at the hearing. In determining the amount owed by the school, the Department will consider the school's size and the seriousness of its violation or misrepresentation.

## ***Limitation***

Under a limitation, a school agrees to abide by certain specific conditions or restrictions as it administers FSA program funds; by doing so, it 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 begun). A suspension action is used when a school can be expected to correct an FSA program violation in a short time.

## ***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 18 months. A school that substantially misrepresented the nature of its educational programs, its financial charges, or the employability of its graduates may not be reinstated for at least three months.

## ***Corrective action***

As part of any fine, limitation, suspension, or termination 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.

## ***Possibility of reinstatement***

As mentioned previously, a school requesting reinstatement in the FSA programs must submit a fully completed Application to the Department and demonstrate that it meets the standards in Subpart B of the General Provisions. As part of the reinstatement process, the school must show that the school 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.

### *Criminal penalties*

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#### **Criminal penalties cite**

Sec 490

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 Amendments, 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.

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 will, upon conviction, be fined up to \$10,000 or imprisoned for up to one year, or both.

Any person who knowingly and willfully 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, will, upon conviction, be fined up to \$20,000 or imprisoned up to five years, or both.

## Case Management Teams

### Case Management Divisions

### Case Management and Oversight

*Case management and Oversight contains four Case Management Divisions. These divisions perform similar functions, and each division is responsible for a separate section of the United States. Each division implements the following case management team functions: audit resolution, program review, financial statement analysis, and recertification. The four divisions are:*

- *Case Management Division Northeast*
- *Case Management Division Southeast*
- *Case Management Division Southwest*
- *Case Management Division Northwest*

*The division functions are performed by teams headed by an Area Case Director and composed of staff from Washington, D.C., and the region. Each division contains two or more of these teams. Listed below are the teams, their telephone numbers, and the states each team is responsible for.*

<i>Team</i>	<i>Telephone #</i>	<i>States Covered</i>
<b><i>Case Management Division Northeast</i></b>		
Boston Team	617-223-9338	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
New York Team	212-264-4022	New Jersey, New York, Puerto Rico, and Virgin Islands
Philadelphia Team	215-656-6442	Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia
<b><i>Case Management Division Southeast</i></b>		
Atlanta Team	404-562-6315	Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina
Kansas City Team	816-268-0410	Iowa, Kansas, Kentucky, Missouri, Nebraska, and Tennessee
<b><i>Case Management Division Southwest</i></b>		
Dallas Team	214-880-3044	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
San Francisco Team	415-556-4295	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Republic of Palau, Republic of the Marshall Islands, Northern Marianas, and the Federated States of Micronesia
<b><i>Case Management Division Northwest</i></b>		
Chicago Team	312-886-8767	Illinois, Minnesota, Ohio, and Wisconsin
Seattle Team	206-615-2594	Alaska, Idaho, Oregon, Washington, and Indiana
Denver Team	303-844-3677	Colorado, Michigan, Montana, North Dakota, South Dakota, Utah, and Wyoming

*The Case Management Division Northeast is also responsible for certification and monitoring of foreign schools. For information on foreign schools you should contact 202-377-3163.*

