

# Institutional and Program Eligibility

## CHAPTER

# 1

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

A school that wishes to participate in the FSA programs must demonstrate that it is eligible to participate before it can be certified for participation. A school must apply to and receive approval from the Department of its eligibility to participate. Some schools apply only for a designation as an eligible institution (they do not seek to participate) so that students attending the school may receive deferments on FSA program loans, or be eligible for the HOPE/Lifetime Learning Scholarship tax credit, or so that the school may apply to participate in federal HEA programs other than the FSA programs. The same application form is used to apply for both eligibility 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 FSA programs provided the school offers the appropriate type of eligible program (see chart on next page). This section covers the key elements of the three definitions, giving special attention to those requirements that affect the definition of an eligible program.

Although the criteria for the three types of institutions differ somewhat, 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 nonprofit corporations or associations whose net earnings do not benefit any private shareholder or individual,
- legally authorized to operate as a nonprofit organization by each state in which it is physically located, and
- determined by the Internal Revenue Service 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.

**Admission** as a regular student offered only to individuals with a high school diploma or its recognized equivalent, home-schooled students, or individuals beyond the age of compulsory school attendance in the state where the institution is located.

### Types of Institutional Control

<b><i>Institution of Higher Education</i></b>	<b><i>Proprietary Institution of Higher Education</i></b>	<b><i>Postsecondary Vocational Institution</i></b>
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

<ul style="list-style-type: none"> <li>(1) Associate, bachelor's, graduate, or professional degree, or</li> <li>(2) At least a two-year program that is acceptable for full credit toward a bachelor's degree, or</li> <li>(3) At least a one-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.</li> </ul>	<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> <ul style="list-style-type: none"> <li>(1) Provides at least a 15-week (instructional time) undergraduate program of 600 clock hours, 16 semester or trimester hours, or 24 quarter hours. May admit students without an associate degree or equivalent.</li> <li>(2) Provides at least a 10-week (instructional time) program of 300 clock hours, 8 semester or trimester hours, or 12 quarter hours. Must be a graduate/professional program, or must admit only students with an associate degree or equivalent.</li> <li>(3) Provides at least a 10-week (instructional time) undergraduate program of 300-599 clock hours. Must admit at least some students who do not have an associate degree or equivalent, and must meet specific qualitative standards. Note: These programs are eligible only for FFEL and Direct Loan participation.</li> </ul>
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### Additional Rules

	<p>Two-Year Rule (applicable to proprietary and postsecondary vocational institutions) — Legally authorized to give (and continuously has been giving) the same postsecondary instruction for at least two consecutive years.</p> <p>Special rule (applicable to proprietary institutions) — Derives no more than 90% of its revenues from FSA funds.</p>
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*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, 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 FSA programs. For more information on applying for participation in the FSA 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**

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### State

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

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### Nationally recognized accrediting agency or association

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

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### 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.

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**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 FSA 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 FSA programs and must notify the Department within 10 days.<sup>1</sup> The required notification can be made 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 report (in question 15 of the *Application for Approval to Participate in Federal Student Financial Aid*

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**Changing accrediting  
agencies cite**

34 CFR 600.11

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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.

*Programs* (Application/EAPP)) its current institution-wide accrediting agency, the prospective institution-wide accrediting agency, and the reason (in question 69 of the *Application/EAPP*) 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. For FSA 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 FSA 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.

To be eligible for Federal Student Aid, 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. (For more information on this student eligibility requirement, see *Volume 1 — Student Eligibility*.)

### 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 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.

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#### Regular student:

A person who is enrolled (or is accepted for enrollment) in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential.

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#### Regular student cite

34 CFR 600.2

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#### The Amendments of 1998 extended

eligibility to home-schooled students. Final regulations were published on October 22, 1999.

## ***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 FSA 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 FSA 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 and additional discussion of home-schooled students' eligibility, see Volume 1–*Student Eligibility*.)

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### **Ability-to-benefit cite**

34 CFR 668, Subpart J

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### **Ability to benefit limitation cite**

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

Students who have completed their secondary school education through home schooling are not considered to have a high school diploma or its recognized equivalent unless their state has legislated that equivalency. However, as we discuss in more detail below, home-schooled students may be eligible to receive FSA funds.

A school that admits students who do not have a high school diploma nor 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 nor 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***

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### **Home schooling cite**

34 CFR 668.32(e)

Federal law makes home-schooled students who complete a secondary school education in a home school setting that is treated as a home school or a private school under state law eligible for FSA funds. However, the law restricts institutions from admitting students who lack high school diplomas or the equivalent, or who are too young to be beyond the age of compulsory education in their state. Here, we clarify the circumstances under which home-schooled students who complete their home-school curriculum before reaching the minimum age of compulsory education, properly can be admitted to a postsecondary school participating in FSA programs.

We consider an underage home-schooled student to be beyond the age of compulsory attendance if the state where your school is located would not consider the student truant and would not require the student, once he or she completes the home school program, to further attend secondary school or continue to be home schooled. If your school admitted these students, it would not jeopardize its institutional eligibility for the FSA programs.

## “TWO-YEAR” RULE

To be eligible as a proprietary institution or a postsecondary vocational institution, a school must be legally authorized to give (and continuously been giving) the same postsecondary instruction 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 of an eligible proprietary institution or postsecondary vocational institution seeking status as a main campus or freestanding institution is subject to the two-year rule. A branch campus must be 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 as a branch campus 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.

## ADDITIONAL INSTITUTIONAL ELIGIBILITY FACTORS

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 (or its owner) files for bankruptcy, or if the school, its owner, or its CEO is responsible for a crime involving FSA program funds. A school that becomes ineligible because of one of these factors must immediately stop awarding FSA program funds and must comply with the requirements in 34 CFR 668.26 for a school that has lost its FSA participation. For more information on requirements when a school’s FSA participation ends, see chapter 11.

### Home schooling example

If your state requires children to attend school until age 17, you may admit as a regular student a home-schooled student who completes the secondary curriculum at age 16 if your state would not consider the student truant and would not require that student to go back to high school, or continue a home school education.

### Home schooling Note

Home-schooled students may self-certify their completion of a home school curriculum, just as high-school graduates may self-certify their receipt of a diploma. If their state issues a certification of home school completion, students may self-certify receipt of it.

### 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

## ***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 FSA 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.

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### **Notification cite**

34 CFR 600.8(h)

If there is a change to any of a school's answers to the Yes/No questions in Section G of a submitted Application (which deal with enrollment thresholds in these areas), the school must notify the Department via the application. The Department will advise the school of its options, including whether the school might be eligible for a waiver.

(Waivers are available for the correspondence student limitation, the incarcerated student limitation, and the ATB limitation.)

For each of the limitation requirements, the school must notify the Department (via Section G of the Application) of the school's failure to meet a requirement, its falling within a prohibited limitation, or its ineligibility for a continued waiver, as applicable. The school's notification must occur by July 31 following the end of an award year. A school that fails to meet any of these requirements loses its eligibility to participate in any FSA program as of the last day of the most recent award year.

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 nonprofit must continue to file this report for the first year of its nonprofit 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 FSA 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

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

### 90/10 cite

Sec. 102

34 CFR 600.5

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*FSA Program Funds (except LEAP or FWS) used for tuition, fees, and other institutional charges to students*

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*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

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## 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.

## FSA program funds for institutional charges

In figuring what FSA program funds were used to pay tuition, fees, and other institutional charges, a school **must** assume that any FSA 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

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### Revenues

Revenues from auxiliary enterprise and activities that are not a necessary part of the students' education, such as revenues from the sale of equipment and supplies to students and revenues from vending machines, may **not** be included in the denominator of the 90/10 calculation.

If a clinic or service is

- operated by the school;
- offered at the school;
- performed by students under direct faculty supervision; and
- required of all students as part of their educational program

then revenues from the clinic or service may be included in the denominator of the 90/10 calculation.

In figuring revenues generated by school activities, a school may include only revenue generated by the institution from activities it conducts, that are **necessary for its students' education or training**. The activities must be

- conducted on campus or at a facility under the control of the institution;
- performed under the supervision of a member of the institution's faculty; and
- required to be performed by all students in a specific educational program at the institution.

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.

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### 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.

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

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

Revenue generated from the sale of *nonrecourse* institutional loans to an unrelated third party may be counted as revenue in the denominator of the 90/10 calculation to the extent that the revenues represent actual proceeds from the sale.

Loans made by a private lender that are **in any manner** guaranteed by the school are known as *recourse loans*. The proceeds from recourse loans may be included in the denominator of an

institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution's reported revenues are also reduced by the amount of recourse loan payments made during that fiscal year.

Note that recourse loan payments may be for recourse loans that were made in a prior fiscal year. Under the cash basis of accounting the reductions to total revenues in the denominator of the 90/10 calculation are reported in the fiscal year when the payments are made.

The nonrecourse portion of a partial recourse loan may be included in a 90/10 calculation. In order to include a partial recourse loan in a 90/10 calculation, the contract must identify the percentage of the sale that is nonrecourse; only that percentage may be included. Furthermore, no after-the-fact adjustments may be provided for.

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.

### 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 FSA 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 FSA 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.

### For schools using a calendar year

as their fiscal year, their most recently completed fiscal year is the one that ended on December 31, 2002. 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, 2003.

## Financial statement notification

A school must send notice of its failure to satisfy the 90/10 Rule to the Department at the following address:

### By U.S. Mail to:

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 20002-5402

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

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### Conditions of institutional ineligibility cite

34 CFR 600.7

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### Correspondence limitations cite

Sec. 481(a)(3)(A) and (B)  
34 CFR 600.7(a)(1)(i) and (ii)

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### Student eligibility

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

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### 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).

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### Incarcerated student limitation cite

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

## Correspondence course and correspondence student limitation

In general, a school does not qualify as eligible to participate in the FSA programs if, for the latest complete award year,

- more than 50% of the school's courses were correspondence courses (correspondence course limitation), or
- 50% or more of the school's regular enrolled students were enrolled in correspondence courses (correspondence student limitation).

For additional information on the effects of correspondence courses and students on institutional eligibility, see chapter 12.

## Incarcerated student limitation

A school is not eligible for FSA 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 associate degree programs or four-year bachelor's degree programs, and also to any other programs in which the incarcerated regular students enrolled have a 50% or greater completion rate. (The calculation of this completion rate is specified in 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 FSA assistance, see *Volume 1 — Student Eligibility*.

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

## Ability-to-benefit limitation

A student who has neither a high school diploma nor its equivalent is referred to as an *ability-to-benefit* student (see *Volume 1 — Student Eligibility* for additional information about ability-to-benefit students). Unless a school provides a four-year bachelor's degree program, or a two-year associate degree program, the school will 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.

If a nonprofit institution exceeds the ability-to-benefit limitation because it serves significant numbers of ability-to-benefit students through contracts with federal, state, or local government agencies, the Department may waive the limitation.

The waiver will only be granted if no more than 40% of the institution's regular students not served through contracts with federal, state, or local government agencies to provide job training do not have a high school diploma or its equivalent. If granted, the waiver may be extended in each year the school continues to meet the requirements. 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 FSA 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 FSA program funds; or
- has been judicially determined to have committed fraud involving FSA 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.

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**Program eligibility cite**  
34 CFR 668.8

### ***Determination of program eligibility***

Generally, a student must be enrolled in an eligible program to receive FSA 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 FSA 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). (Please 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 [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 FSA 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 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.

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### **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 of Labor, in consultation with the Department of Labor, to be a recognized occupation.

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.

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## Completion Rate Calculation

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

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*Number of regular students enrolled for the year*

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

*— number of regular students enrolled at the end of the year*

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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.

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## Placement Rate Calculation

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*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*

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*Number of regular students who received credential for successfully completing the program.*

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

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## Exceptions to the eligible program definition

There are two cases (certain types of preparatory coursework and **initial** teacher-certification programs) where students may receive FFEL or Direct Loan funds for enrollment in a program even when it does not meet the eligible program definition. In addition, students enrolled in an initial teacher-certification program might be eligible for Pell Grants (For more information, see *Volume 1 — Student Eligibility*.)

## WEEK OF INSTRUCTIONAL TIME

A week of instructional time is used in determining:

- program eligibility (measuring program length);
- academic year length;
- award limits in the Pell program (formulas three and four) (see Volume 3 – Pell Grant Program); and
- the frequency of awards in the Direct Loan and FFEL programs.

A week of instructional time in an academic program occurs when, within a consecutive seven-day period an institution provides:

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

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

## Treatment of holidays

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 FSA program eligibility requirements for specific educational programs. For example, only undergraduate educational programs are eligible under the Pell Grant and FSEOG programs. Correspondence programs are not eligible unless they meet the general requirements for an eligible program and are required for the student's regular program of study leading to a degree. Certain telecommunications courses may be considered correspondence courses and may be subject to the same requirements.

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### Week of instructional time cite

34 CFR 668.8(b)(3)(i)

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### The November 1, 2002

regulations (effective July 1, 2003) eliminated the definition of a week of instructional time that was known as the 12-hour rule. There is now one definition for a week of instructional time. Schools had the option of implementing this rule as early as November 1, 2002.



### **ESL Programs**

Students enrolled in a program that consists solely of English as a Second Language (ESL) instruction are eligible **for Title IV funds only from the 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 may admit only students who need instruction in English to be able to use the knowledge, training, or skills they already have**. The school must document its determination that the ESL instruction is necessary for each student enrolled.

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

A student also may receive FSA program funds for ESL coursework that is part of a larger eligible program. In this case, the ESL coursework is treated as remedial coursework and the student has general Title IV program eligibility. 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 FSA 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 FSA 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**

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**Conversion cite**  
34 CFR 668.8(k) & (l)

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 institution's associate degree, bachelor's degree, professional degree, (or an equivalent degree as determined by the Secretary) and the degree offered by the institution 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 FSA purposes. Public and private nonprofit hospital-based diploma schools of nursing are also exempt from using the clock-to-credit hour conversion formula to calculate awards for the FSA programs.

**Important:** The aforementioned exemptions for programs that lead to a degree that is equivalent to an associate, bachelor's, or professional degree program of at least two years do not permit a school to ask for a determination that a *nondegree* program is equivalent to a degree program.

In order to evaluate the eligibility of an undergraduate program in credit hours that does not qualify for an exemption, the school must take the following steps. In Step 1, the school determines the total number of clock hours of instruction in each semester of the program. In Step 2, the school applies the appropriate conversion formula to determine the revised number of credit hours in each semester of the program. In the third step, the school evaluates the eligibility of the program by determining the total revised number of credit hours in the program. Finally, in Step 4, the school determines the eligibility of a student in each semester of the program for FSA program funds based on the number of credits arrived at through the application of the formula.

To determine the number of credit hours in a program for FSA purposes, schools must use one of the following formulas.

#### For a semester or trimester hour program

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

30

#### For a quarter hour program

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

20

The school must use the resulting number of credit hours to determine if a program is eligible under the eligible program

### Acceptable doesn't mean accepted

Consider a student who completes a two-year program in plumbing and then wants to reenroll in the school's Bachelor's program in construction technology.

Any of the five plumbing courses taken by the student in the two-year plumbing program may be used to satisfy the plumbing requirement in construction technology. However, the construction technology program requires only two plumbing electives, and only two plumbing courses are accepted toward the student's degree in construction technology.

Since all of the plumbing courses that are part of the two-year program are acceptable in the construction technology program, the fact that only two plumbing courses are accepted does not disqualify the plumbing program for the exception.

### Rounding prohibited

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

### Measuring Attendance

A student's period of attendance is measured according to one of several commonly accepted academic standards. A clock hour is based on an actual hour of attendance, (though each hour may include a 10-minute break). Credit hours are typically based on two hours of homework for each hour of class attendance. A school is not permitted to count more than one clock hour per 60-minute period; in other words, a school may not schedule several hours of instruction without breaks, and then count clock hours in 50-minute increments. The result would be that seven hours of consecutive instruction would count as 8.4 clock hours ( $420 \text{ minutes} \div 50 \text{ minutes} = 8.4 \text{ hours}$ ). Seven real-time attendance hours may not count for more than seven clock hours.

requirements explained under *Types of eligible programs at a proprietary or postsecondary vocational institution*.

In order to meet minimum program eligibility standards, the conversion formula must yield one of the following results:

- a program offered in semesters or trimesters must provide at least 16 semester or trimester credit hours over 15 weeks of instructional time (16 semester or trimester credit hours per year is three-quarter time; 24 per year is full time);
- a program offered in quarter hours must provide at least 24 quarter credit hours over 15 weeks of instructional time (24 quarter credit hours per year is three-quarter time; 36 per year is full time);
- a ten-week program that admits as regular students only persons who have completed the equivalent of an associate degree must provide at least 8 semester or trimester credit hours, or 12 quarter credit hours.

If a school applies the appropriate formula and finds that a program is eligible, the converted credit hours are used to determine the amount of FSA funds that a student who is enrolled in the program is eligible to receive 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 FSA eligibility for these programs.

**Important:** When some states and accrediting agencies approve programs, they also approve the number of credits in the programs. The credits approved by states and accrediting agencies are **not** the credits for Title IV purposes.

For Title IV purposes, the number of credits in the program will be those determined by the conversion formula, and they will never be more than those approved by a state or accrediting agency.

## CLOCK HOUR/CREDIT HOUR CONVERSION EXAMPLE

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

SU determines that there are 1,440 clock hours of instruction in the program. There are 330 clock hours of instruction in the first and second semesters (660 first-year total), and 390 clock hours of instruction in the third and fourth semesters (780 second-year total). By applying the conversion formula, the school determines that the number of credit hours for Title IV, FSA purposes is 11 for the first two semesters, and 13 for the last two semesters.

### Step 1

330 clock hours of instruction in semesters one and two

390 clock hours of instruction in semesters three and four

Total number of clock hours of instruction in the program  
 $(2 \times 330) + (2 \times 390) = 1,440$

### Step 2

$\frac{330 \text{ clock hours}}{30} = 11$  credit hours in semesters one and two

$\frac{390 \text{ clock hours}}{30} = 13$  credit hours in semesters three and four

### Step 3

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 "Program Eligibility Requirements").

### Step 4

For the first two semesters of the program, students are eligible for payment for only 11 credit hours of instruction (see Step 2). 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.

In the third and fourth semesters of the program, students are eligible to be paid for 13 credit hours of instruction (see Step 2). Students attending the third and fourth semesters can be paid as full-time students.

## 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 and foreign veterinary schools. You can find additional information about foreign school eligibility in *The Student Financial Aid Handbook for Foreign 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

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#### Foreign medical school cites

Sec. 102(a)(2)  
34 CFR 600.51

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#### 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).

- 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
- 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 the 60% 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.

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

***Student Exception*** — A student who was continuously enrolled at a 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 for attendance while the school 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 FSA 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 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.

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Foreign school reporting cite  
Sec. 117

### **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

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#### **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.

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#### **Gift defined**

Any gift of money or property.

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#### **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.

- 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;<sup>2</sup>
- 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 contract, a description of the conditions or restrictions, and the name of the foreign government.

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2. 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.

## 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.

